92-944

NO._____

Supreme Court, U.S.
FILED
NOV 30 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS THROUGH THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, "the Heir"
1495 Sunnyside Avenue
Highland Park, Ill. 60035
(708) 831-3893 Pro Se

QUESTIONS PRESENTED

I. Since, the 5th Amendment of the U. S. Constitution states: " . . . that no person shall be deprived of life, liberty or property without due process of law and the 14th Amendment states: " . . . Sect. 1, Due Process of Law . . . nor shall any state deprive any person of life, liberty, or property, without due process of law.", the instant question is did the State of Texas through its Probate System and its appointed or elected officials, Judge Robert M. Burnett, Probate Court Number One, Tarrant County, Texas and Johnny W. Richards, II, the duly appointed and sworn, Successor Administrator of the Estate of Ernest Luther Catlett, Deceased in No.77-2726-1 by appointment on March 22, 1984 (R.119, Item # 41) did make his "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" on June 18, 1984 (R.123, Item #38) approved on July 18, 1984 by Judge Burnett, to sell some alleged 39 acres of land purported to belong to Ernest's Estate and

on October 19, 1984, Richards did sell that land to some clients of his, and without any "notice" or "hearing" to the real owner, "the heir" , M. Wiley Catlett, a citizen of the State of Illinois (R.134,Item#34); hence, did they divest "the heir" of the title which vested in "the heir" at the intestate's death, thereby, depriving him of his property without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution?

II. In Texas, "The Court administers the estate, not the administrator." and there is a special confidential and fiduciary relationship between the Probate Court Judge (Robert M. Burnett) who really administers the estate (The Estate of Ernest Luther Catlett, Dec'd., No.77-2726-1, Tarrant County, Texas) and its sole "heir" (M. Wiley Catlett); hence, the question is: Can Probate Court Judge Burnett who outside of his immunity be held accountable under law where he threatened the "heir" (an Illinois citizen) by saying: "I'll see that

you don't get anything from your father's estate." ; and where Judge Burnett with the assistance of "Richards" and others, in collusion, Judge Burnett Carried out that threat made outside of his immumity?

III. Does Tim Curry, the Criminal District Attorney of Tarrant County, Texas have the authority to represent Judge Burnett, the Probate Judge in Court No. 1, Tarrant County, Texas who is charged with extrinsic fraud in this action ; hence, does "Tim Curry" have a conflict of interest?

IV. Does Judge Burnett and his appointed Successor Administrator ("Richards") have the authority to sell some purported 39 acres of land out of the "heir's" grandfather's & grandmother 225.1 acre AUBREY, TEXAS Farm, where there has been no "legal partition" between the estate and the purported living cotenant, Florence Iona Catlett, attorney John R. Lively's client?

V. In Texas, all orders & judgments & deeds which convey title to real property (the land) must contain a sufficient description of that

land to be conveyed, as required by the Texas Statute of Frauds, V.T.C.A., Bus. & C.,Sect. 26.01; BOODY v. GRAY(Tex.Civ.App. - 1973) 497 SW2d 600 at p.603; Hence, the question is: Are the following orders & judgments null & void where each contains the insufficient legal descriptions of that land as prepared by Attorney John R. Lively (Flo's attorney) for the judges in those orders and judgments:

(A) - Judge Burnett's, MAY 14, 1981, ORDER CONFIRMING SETTLEMENT, No.77-2726-1, Tarrant County, Texas, In Re: The Estate of Ernest Luther Catlett, Dec'd. (R.38; ST/F - I; Appendix "M", App.22 - 25

(B) - Judge Albert L. White's SEPT. 15, 1981, "Agreed Judgment", No.236-39718-76, 236th Dist.Ct., Tarrant County, Tx., styled: M. Wiley Catlett, Admin. of The Estate of Ernest Luther Catlett, Dec'd. vs. Florence Iona Catlett, Individually & as Executrix of the Estate of Pharon C. Catlett, Dec'd., et al (R.306,Dec. 13, 1991; Appendix "M", App. 22 - 25

(C) - Judge Narsutis' three (3) OCT. 4-4-14, 1982 Judgments, No.81-8158-B, 158th Dist. Ct., Denton County, Tx., styled: Florence Iona Catlett vs. M. Wiley Catlett, Admin.of the Estate of Ernest Luther Catlett, Dec'd., et al (Appendix "M", App. 22-25.

VI. Did the "heir's" father, Ernest Luther Catlett, inherit 100% of his grandfather's & grandmother's 225.1 acre AUBREY, TEXAS farm?

TABLE OF AUTHORITIES

CASES:	PAGE
Armstrong v. MANZO, 380 US 545, 14 L.Ed.2d 62 at 65-66, 85 S.Ct. 1187	36, 37
Askey v. Power, (CA) 21 SW2d 326 at 332, rev.on other grounds 36 SW2d 446 at 448	40
Bankersv. Jefferson County No. 1, 277 SW2d 130 at 135 (Tex.Civ. App. 1950), n.w.h.	2, 29
Bates v. Southgate, 308 Mass, 170, 31 N.E.2d.551, 558, 133 A.L.R. 1349, quoted with approval by TEX.SUP.CT.in Dallas Farm Machinery Co. v. Reaves (150 TEX. 1) 307 SW2d 233 at 242	44, 45
Boddy v. Gray, (Tex.Civ.App.1973) 497 SW2d 600 at 603	iv
Brooks v. Marouz, (Tex.Civ.App 1977) 554 SW2d 292 at 293, n.w.h.	42
Brownsville (city of) v. Galvan, 139 TEX. 128, 162 SW2d 98 at 99-100 (1942)	2, 29
Brunson v. Brunson, (CA 7th Dist. 1963) 372 SW2d 761 761,writ Dism. w.o.j.	32, 33
Cartwright v Minton (Tex.Civ.App. 318 SW2d 449 at 454, RNRE	44
Chinoweth v. Haskell, 3 Pet (92) at 95, 7 L.Ed. 164 at 170	53

Cipollone, Ind. & as Executor of the estate of Cipollone v. Liggett Group, Inc. et al, (1992) 120 L.Ed2d 407 at 417, 112 S.Ct. ___, 500 US___ 10

City of Brownville v. Galvan, 139 TEX 128 (1952) 162 SW2d 98 at 99-100 2, 29

Clay v. Field, (1885) 115 US 260, 6 S.Ct. 36, 29 L.Ed. 375 at 376 23

Clements v. Chajkowski, (1948) 146 TEX. 408, 208 SW2d 841 at 843 45

Comet Aluminum Company v. Judge Dirbel, 1970, 450 SW2d 56 at 59(TEX.SUP.CT.) 30

Coker v. Eckert, (T.C.A.Ft.Worth 1963) 369 SW2d 471 at473,writ ref.n.r.e. 59

Cook, Admin. v. Carson & Lewis, 38 TEX 284 at 287 46

Cox v. Hunt, 145 US 376, 36 L.Ed. 741, 12 S.Ct. 962 53

Dallas Farm Machinery Co. v. Reaves, (TEX.SUP.CT.) 150 TEX. 1, 307 SW 2d 233 at 242 45

Dalton v. Rust, 22 TEX. (133)134 53

Elliott v. Peirsol, 1828, 1 Pet 328, 7 L.Ed. 164 at 170 2, 50

Farley v. Dorsey,(TEX.Comm'n,Sect "A" Adopted) 1940, 135 SW2d 89 at 90 50

Frost Nat.Bank of San Antonio v. Newton, (TEX.SUP.CT. 1977) 554 SW2d 149 at 153 56

Gallenmore v. Owen,(Tex.Civ.App.1934) 69[illegible] SW2d 469 at 472 23

Greer v. Greer(TEX. 1946)144 TEX. 528, 191 SW2d 848 at 849-850 52

Greer v. Robinson, (Tex.Civ.App.Ft.Worth 1956) 297 SW2d 279 at 282,ref.n.r.e.

Haines v. McLean, 154 TEX. 272, 276 SW2d 777,reh.den. 53

Hallenback's Estate (U.S.Dist.Ct.- Dist. of Col.1954) 122 F.Supp. 212 at 213 48

Hatch v. De La Graza's Ex'r. 22 TEX 176 53

Henson v. Estate of Crow(TEX.SUP.CT.1987) 734 SW2d 648 at 649 42

Johnson v. Colt,(CA) 48 SW2d 397 50

Jones v. Gilliam (Tex.Civ.App. 1918) 199 SW2d 694 at 698 35

Jones v. Gilliam (TEX.SUP.CT. 1919) 212 SW2d 930 3, 46

Jones v. Hext (Tex.Civ.App.) 67 SW2d 441, writ ref. 60, 57

Kittredge v. Race, 1875, U.S.SUPREME CT. 92 US 116, 23 L.Ed. 488 at 490 33

Guilliams v. Koonsman,(1955 TEX.SUP.CT.) 279 SW2d 579 at 582 57

Magruder v. Dury, 1914, 225 US 106, 119, 35 S.Ct. 77, 82, 59 L.Ed. 151 48

Mansell v. Saunders (CA5th-1967) 372 F2d 573 at 576 35

Maupin v. Chaney,(TEX.SUP.CT. 1942) 139 TEX. 426, 163 SW2d 380 at 431 52

Mullane v. Central Hanover B. & T. Co. (1950) 339 US 306 at 313, 94 L.Ed 865 at 872, 70 S.Ct. 652 36

Murphy v. Cartwright(CA5th - 1953) 202 F2d 71 at 73 38

Neblett v. Butler, (CA - 1942) 162 SW2d 458, writ ref.w.o.m. 42

Norris v. Hunt, 51 TEX 609 53

Parker's Estate (1926) 200 Cal 132, 251 P. 907, 49 A.L.R. 1025 48

Pemberton v. Leatherwood,(CA) 219 SW2d 490,reh.den.err.rel 49

Price v. Estate of Anderson(TEX.1975) 522 SW2d 690 at 691 42

Read v. Gee,(Tex.Civ.App.Ft.Worth-1977) 551 SW2d 496 at 498, RNRE 63, 36

Republic Nat.Bank of Dallas v. Fredericks (TEX.SUP.CT. 1955) 155 TEX. 79, 283 SW2d 39; 56

In Re: Roe's, 281 N.Y. 541, 24 N.E.2d 322, 131 A.L.R. 712 57

Seal v. Barnes, (OKLA.SUP.CT.1934) 168 OKLA 550, 35 P2d 704 at 713-714 36

Small v. Morris,(1953) 255 SW2d 174 at 174 53

Small v. Small, (Tex.Civ.App.1968) 434 SW2d 940 at 941,ref.n.r.e. appeal after remand 464 SW2d 734 ref.n.r.e. 41

Smith v. Paschal (TEX.Comm'n,Sect."A" adopted) 1928, 1 SW2d 1086 50

Smith v. Sorelle (TEX.SUP.CT. 1935) 87 SW2d 703 at 705 53

Strates v. Dimotsis (CA5th) 110 F2d 374 at 376,cert.denied s311 US 666, s65 L.Ed 427, s61 S.Ct.24 39

Teague v. Swasey, 46 Tex.Civ.App., 151, 102 S.W. 458 23

Thaw v. Thaw, 2nd Cir. 27 F2d 729 at 732 39

Thompson v. Brachen, (Tex.Civ.App. Dallas - 1936) 93 SW2d 614 at 616 53

Walters v. Prestidge (1867) 30 TEX 65 26, 41, 43

Whitmire v. Powell,(Tex.Civ.App.-1909) 117 SW 438 43

Wilkes v. Wilkes, (TEX. 1972) 488 SW2d 398 at 401 59

Williamson v. Berry, 1850, 8 How. 495, 12 L.Ed. 1170 at 1189 31

Wolff v. McDonnell,(1974) 418 US 539 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952 36

Wood v. Georgia, (1981) 450 US 261, 67 L.Ed.2d 220 at 230, 101 S.Ct. 1097 48

York v. State of Texas (1890) 137 US 15 at 16, 34 L.Ed. 604 at 605, 11 S.Ct. 9 30, 31

Zahn v. National Band of Commerce, (1959)-CA5th Dist) 329 SW2d 783,writ ref.n.r.e. 19, 33

Howlett v. Rose, 1990, 496 US 356, 110 L.Ed.2d 332 at 335, 110 S.Ct. 2430 10

Ex Parte Godeke (TEX.SUP.CT.1962) 355 SW2d 701 at 703 , 704 6

Russell v Dobbs, (1942) 63 TEX. 282, 354 373 26

Murphy v. Slaton(TEX.1954) 273 SW2d 588, at p.595-6, 154 TEX. 35 60

Dickerson v. Keller,521 SW2d 288, at 292, writ,ref.n.r.e. 60

UNITED STATES CONSTITUTION:

Article, III, Sect. 2 10

5th Amendment 36, i, ii, 4, 10, 11, 31

14th Amendment i, ii, 4, 36, 11, 31

FEDERAL STATUTES:

United States Code:

Title 28, Section 1257(a) 9, 10

TEXAS CONSTITUTION:

Article 1824, Sect. 11.07(4) as amended 1983

Article 3302, 1925 23

Art. V., Sect. 8 50

Art. V., Sect. 16 50

Art. I., Sect. 19 36

TEXAS RULES of CIVIL PROCEDURE:

Rule, 90 2, 29

Rule, 103

Rule, 106

Rule, 306a 6

Rule, 329b, subd. 5 6

Rule, 121 31

21 AM. JUR. - Executors & Administrators, SECT., 532 48

18 TEX. JUR. 2d.,

36 TEX. JUR. Remainders & Reversions, Sect. 7, p.877 57

CORPUS JURIS SECUNDUM, vol.33, Executors & Administrators, H. WASTE, CONVERSION, or EMBEZZLEMENT ASSETS,
Section 242 46
Section 243, WASTE 47

TEXAS STATUTES:

V.A.T.S., Probate Code, Sect. 3(o) 18, 19, 32

V.A.T.S., Probate Code, Sect. 3(r) 40, 18, 19, 32

V.A.T.S., Probate Code, Sect. 5A(R)

V.A.T.S., Probate Code, Sect. 5(e) 20

V.A.T.S., Probate Code, Sect. 37 19, 32, 35

V.A.T.S., Probate Code, Sect. 49 19, 33

V.A.T.S., Probate Code, Sect. 50 19, 33

V.A.T.S., Probate Code, Sect. 298 45

V.A.T.S., Probate Code, Sect. 301 25, 41, 44, 45

V.A.T.S., Probate Code, Sect. 308 26

V.A.T.S., Probate Code, Sect. 310 26, 40

V.A.T.S., Probate Code, Sect. 313 26, 40

V.A.T.S., Probate Code, Sect. 353 23

V.A.T.S., Probate Code, Sect. 354 23

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS through The Supreme Court of Texas

OPINIONS BELOW 5

JURISDICTION 9

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 10

STATEMENT OF THE CASE 16

SUMMATION OF THE STATEMENT 27

REASONS FOR GRANTING THE WRIT 32

FIRST REASON: Due Process of Law 32

Circumstantial evidence 35

"The touchstone of due process is protection of the individual against arbitrary action of government." 36

Supreme Court of Oklahoma, said: . 37

Supreme Court of the U. S. Reversed the Texas Court . . . 38

SECOND REASON: Probate Judge charged with Extrinsic Fraud, threatens the "heir" & wastes assets of the estate 39

THIRD REASON: Conflict of Interest 48

FOURTH REASON: Illegal Partition 49

FIFTH REASON: Insufficient descriptions of the land in judgments & orders 51

SIXTH REASON: The "heir's" position has merit & is not frivolous . . 55

CONCLUSION: 61

APPENDIX IS IN A SEPARATE VOLUME

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED — PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS — RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS THROUGH THE SUPREME COURT OF TEXAS

Petitioner, M. Wiley Catlett, the Heir, respectfully prays that a writ of certiorari issue to review the Opinion and Judgment of the Second Court of Appeals District of Texas threugh the Supreme Court of Texas dismissing Petitioner's appeal relying only on "Flo's", Florence Iona Catlett's Motion to Strike and

for damages filed in this action on FEB. 7, 1992 (late).

Respondent, "Flo's" motion to strike the whole pleadings is in effect a general demurrer, City of Brownville v. Galvan, 139 TEX. 128, 162 SWd 98 (1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE; BANKER v. JEFFERSON COUNTY NO. 1, 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90, TEX.R. CIV.PROC.

Therefore, "Flo's" motion to strike & for damages, is null and void, as is Justice's Day's FEB. 25, 1992, OPINION and JUDGMENT, Appendix "E", since Justice Day based his Opinion on "Flo's" null & void motion.

> "But if it act without authority its judgments and orders are nullities they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal . . . . "
> ELLIOTT v. PEIRSOL, 1828, 1 Pet 328, 7 L.Ed. 164 at p.170.

Further, the Heir", Petitioner, prays that a writ of certiorari issue to review the settled rule of law regarding those special confidentital & fiduciary relationships between the "Heir" of the estate and the judge

in a Texas Probate Court who administers the estate (JONES v. GILLHAM,(TEX.SUP.CT. 1919), 212 SW 930) and the successor administrator. In the instant case, Judge Burnett and his Successor Administrator, Johnny W. Richards, II (R.119,Items#41-42, Order of 3-22-84) practiced a pattern of waste and of the squandering and the payment of sham and false claims against the "Heir's" father's estate.

Specifically, It was on August 19, 1982, the time was after the hearing had concluded on attorney Steven J. Williams, "Motion to withdraw as Counsel in Ernest's estate". It was difficult for the "Heir" who at that time had a Writ of Error before The Supreme Court of Texas and now was without an attorney. We were still in the courtroom; however, it was outside of Judge Burnett's immunity since the hearing had concluded, when Judge Burnett came over to the "Heir", M. Wiley Catlett, and threatened the "Heir" an Illinois citizen by saying: "I'll see that you don't get anything from your father's estate.". With the assist-

ance of the Successor Administrator, "Richards" and others in collusion, Judge Burnett carried out that threat of his.

Still further, the SUPREME COURT OF THE UNITED STATES is asked to review an unusual constitutional question which may have never been decided as it relates to the State of Texas' Probate Court system and the sale of land purported to belong to the estate; however that land was sold by the Successor Administrator, "Richards", with the approval of the judge of the Probate Court without any "notice" or "hearing" to the real owner of that land, the "Heir"; hence, did they (the Judge and Richards) divest "the Heir" of the "title" to that land which vested in "the Heir" at the intestate's (Ernest Luther Catlett the "Heir's" father) death on June 1, 1977; thereby, depriving "the Heir" of his real property (the land) without "due process of law" in violation of the 5th & 14th Amendments of the Federal Constitution?

OPINIONS BELOW

The 9-9-92, opinion of The Supreme Court of Texas overruling petitioner's motion for rehearing, see Appendix A, unpublished (Note: John T. Adams, CLERK, failed to notice Johnny W. Richards, II, Successor Administrator). The 6-24-92, opinion of The Supreme Court of Texas denying writ of error, "Writ Denied", Appendix B, unpublished, No.D-2437. (Note: John T. Adams, CLERK, failed to notice Richards) The 4-22-92, opinion of The Court of Appeals, Second District of Texas overruled their opinion & judgment of FEB. 25, 1992, APPENDIX B.1, unpublished, No.2-91-213-CV. The 3-26-92, order granting rehearing, Appendix C. The 3-16-92, order for rehearing denied, Appendix D , unpublished, Court of Appeals, Second District of Texas.

The unpublished opinion and judgment of The Court of Appeals, Second District of Texas, Appendix E, dismissal of appeal, signed by Sam Day, Justice without any date of signing, ss such, based on Florence Iona Catlett's motion

motion to Strike, filed, FEB. 7, 1992(late). TEX.R.CIV.PROC.R.306a & R.329b,subd.5, Ex Parte Godeke (TEX.SUP.CT. 1962) 355 SW2d 701. STAMPED:FEB. 25, 1992. The unpublished order for Ext. of Time GRANTED IN PART, Court of Appeals, Appendix F. The unpublished order overruling exception to part of DEC. 9, 1991 order is overruled, Appendix G. The DEC. 9, 1991 unpublished order of the Court of Appeals granted an Ext. of Time. to JAN. 6, 1992 to file transcript, Appendix H. The Nov. 21, 1991 filing of Peggy Ramsey's sworn "AFFIRMATION TO REQUEST FOR STATEMENT OF FACTS" , the official court reporter of Probate Court No. 1, appears in Appendix I, No.2-91-213-CV. The ~~February~~ August 6, 1991, No.77-2726-1, Probate Court No. 1, Tarrant County, Tx., In Re: Ernest's estate, Judge Burnett filed his "ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE" (Note: "February" is lined out, with the month of "August" written in above without any initials of Judge Burnett approving same, appears in Appendix "J"

The February 13, 1991, sworn "APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE" of Johnny W. Richards, II, No.77-2726-1, Probate Court No. 1, Tarrant County, Tx. , it appears in Appendix "K" herein (R.3, Item#274, order R.277, Item#2).

The May 18, 1983, J U D G M E N T (unpublished) , No.2-82-212-CV, Court of Appeals, Second District of Texas, appears in Appendix "L" to this petition. Which REVERSED & REMANDED, Judge John Narsutis' three Judgments of OCT. 4-4-14-82 with all costs $884.00 against Florence Iona Catlett which still are unpaid to the Administrator, M. Wiley Catlett's, attorneys, Whitten & Loveless of Denton, Tx. That was "Flo's" pqrtition action in 158th D. C., Denton County, Tx. where the land is, No.81-8158-B, below. Hence, due to the Court of Appeals, May 18, 1983 J U D G M E N T , reversing & remanding "Flo's" partition action there has been no legal partition of that Aubrey, Texas farm of the "Heir's" grandfather & grandmother.

The unpublished order of Judge Burnett on FEB. 8, 1985, "ORDER AUTHORIZING PAYMENT OF CLAIM" for $41,684.00 to "Flo's" attorney John R. Lively, appears in Appendix "N". The 3-11-85 order to pay Steven J. Williams, attorney, $5,172.48, see Appendix "O". The 2-20-85 order to pay Successor Administrator, $2,400.00 in attorney&s fees, see Appendix "P". The 1-25-85 "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00, see Appendix "Q". The 5-18-88, "SUCCESSOR DEPENDENT ADMINISTRATOR'S REJECTION OF CLAIM" of the law firm of Winn, Beaudry & Virden, see Appendix "R". The 2-13-86"MOTION & ORDER FOR PAYMENT OF CLAIM" for $3,178.17, see Appendix "S". The 7-18-84 order by Judge Burnett approving the sale land purported to belong to the estate, see Appendix "T".

JURISDICTION

The Court of Appeals' Opinion & Judgment in this matter was filed on FEB. 25, 1992 by "stamp", J. Sam Day neglected to show the date of his signing. On MAR. 23, 1992, the "Heir" filed his "Motion for Extension of Time to file his Motion for Rehearing which was granted to APR. 13, 1992. The same was denied on APR. 22, 1992. Respondent had filed a Response on APR. 16, 1992. A timely Application for Writ of Error was filed with the Clerk of the Court of Appeals, as required, with the Clerk of the Court of Appeals on MAY 21, 1992 and filed in The Supreme Court of Texas on MAY 26, 1992. The same was denied and a timely Motion for Rehearing was filed on JUL. 10, 1992. However, it was file marked a second time on JULY 23, 1992 because the "Heir" unknowingly enclosed his $5.00 check for the filing fee. After being advised by John T. Adams, Clerk of the correct fee another $5.00 check was mailed to the Clerk on JULY 14, 1992

The Supreme Court of Texas' denial of that Petition for Rehearing was issued on SEPT. 9, 92 and is set forth in APPENDIX "A".

This Court's jurisdiction is invoked under Title 28 U.S.C.,Sect. 1257(a); HOWLETT v. ROSE, (1990) 496 US 356, 110 L.Ed 2d 332 at 335, 110 S.Ct. 2430, citing jurisdiction under 28 USC, Sect. 1257(a); Cipollone,Individually, and as Executor of the estate of Cipollone v. Liggett Group, Inc., et al (1991) 500 US ___, 120 L.Ed 2d 407, at 418, 112 S.Ct. ___ Certiorari to the United States Court of Appeals for the Third Circuit. Because of the manifest importance of the issue, we granted certiorari to resolve the conflict.

- - - - - - - - - - -

THE CONSTITUTION OF THE UNITED STATES

ARTICLE III.

"SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or . . . . - to Controversies between Citizens of different States . . . "

AMENDMENT V

" . . . . . nor deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV

" Section 1. . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

STATMENT OF THE CASE

Your Petitioner, M. Wiley Catlett, is a citizen of the United States of America and a citizen of the State of Illinois, and the sole "Heir" of Ernest Luther Catlett, his father.

On August 10, 1976, "Wiley" was appointed as the permanent guardian of the person of his

father, Ernest, an incompetent. Ernest was senile, and he suffered from Chronic Organic Brain Syndrome, being about 89. Cause No. 76-1182, Probate Court No. 1, Tarrant County, Texas by order of Judge Robert M. Burnett. (R. ,Item# 64B).On June 1, 1977, Ernest died, "Wiley" was appointed Administrator of his father's estate, No. 77-2726-1, Tarrant County, Texas, Probate Court No. 1 by order of Judge Burnett.(R.24,Item #64C). It was puzzling to find that his father had no funds.

Wiley and his father lived together in Chicago where Ernest worked for the Illinois Central Railroad for many years. We even had a joint bank account in the Northern Trust Company of Chicago. As a matter of fact, Ernest took $7,000.00 from that account and went to Walnut Springs, Texas in 1944 and bought the 414.6 acre farm in Bosque County, Texas which his brother Charlie, Charles, a/k/a C. E., a/k/a, Edward Catlett had been renting after the large house on the homestead of their father, James L. Catlett and wife, A. E. Catlett, had

mysteriously burned down.

In 1944, Ernest paid $15,562.50 for that Walnut Springs, Tx. farm. Charlie bought it from his senile older brother, Ernest, in 1952 for only $15,000.00, so Ernest should have had at least $15,000.00.

On NOV. 20, 1966, Charlie sold that 414.6 acre Walnut Springs, Tx. farm to R. E. CLARK, JR. and his wife for $10,000.00 cash and a Vender's Lien Note of $52,250.00 at 5% payable annually to 1992.

Their younger brother's names are several, Pharon Crawford Catlett, a/k/a, Sam, a/k/a, S. C., (used in the May 16, 1929 deed to Charlie) a/k/a, P. C. Catlett, a/k/a, Pharon C. Catlett, a/k/a, who died in SEPT. 19, 1975 leaving a will in which he disinherited his daughter, Gladys, by another marriage. Gladys had stated that her father, Pharon C. (S.C.) Catlett was never divorced from her mother.

Wiley, when he was a young boy would visit his grandfather's & grandmother's Aubrey, Texas farm every summer, so he knew Charlie and "Sam"

(which ever one called him - not "Pharon")well. "Sam" stole Wiley's watch one summer and pawned it in his name. Florence Iona Catlett, Respondent herein, is the Independent Executrix of P. C. Catlett's estate and the purported living co-tenant of the Aubrey, Tx. Farm, with a 5/6 th interest. Ernest's estate is purported to own the other 1/6th interest. Hence, "Flo" is a necessary & interested party herein.

With regard to "Pharon's" interest in that farm, the following facts are germane.

The "Heir's" grandmother, A. E. Catlett, died during the flu epidemic of 1918-1922, intestate on FEB. 3, 1918 as did their three daughters, Lula, Sula, and Ola. Ernest's estate's interest of 1/6th the attorney's say came through the grandmother's side.

On DEC.12 1928, James L. Catlett, the "Heir's" grandfather died leaving a will by which all of his property decended to Charlie who remained unmarried without any children & who stayed with his father, James L. Catlett.

The important fact is that on MAY 16, 1929,

S. C. Catlett (Pharon) deeded his entire interest in the Aubrey, Tx. Farm to C. E. Catlett (Charlie) for money. Then, about six years later, C. E. Catlett, (Charlie) recorded that deed in the Deed Records, Denton County, Tx., vol.258, pages 251-252. Hence, we know their intentions from their writings. (Pharon) S. C. Catlett therein stated that it was his intention to sell to C. E. (Charlie) Catlett his 1/3rd interest in the Aubrey, Texas Farm.

Therefore, (Pharon) no longer had any interest whatsoever in the Aubrey, Texas Farm.

At the request of Judge Burnett inErnest's Estate, attorney William Smith, Jr. "Wiley's" attorney at that time, wrote a brief which proved that based on the SECOND PROVISION of Charlie Catlett's will (R.27) Ernest inherited 100% of that farm. "Flo's" attorney A. Bruce Wilson submitted a brief also. Judge Burnett in effect denied "Wiley's" position by not making a decision. See pages 31 thru 35 in the "Heir's" APPLICATION for WRIT OF ERROR to the SUPREME COURT OF TEXAS and pages 42 thru 46 in

"Wiley's" Brief for Appellant to the Court of Appeals and on page 7 in the "Heir's" MOTION FOR REHEARING to the Supreme Court of Texas.

Hence, the "Heir's" position, as stated, all along is that his father inherited 100% of his grandfather's and grandmother's Aubrey, Tx. Farm under the laws of descent and distribution - Ernest was the last survivor - or through a construction of the second provision of Charlie Catlett's will (R.27). Therefore, the "Heir's" POSITION is not without merit or fivolous.

See: EVIDENCE SHOWS THAT:
ERNEST LUTHER CATLETT INHERITED
100% OF THE AUBREY, TEXAS FARM

in the argument section on pages, 55 -61

Charlie Catlett died on 8-26-74 and Ernest died on 6-1-77; therefore, under Charlie's will (R.27) the three (3) payments & interest which came due under the CLARK Vender's Lien Note belonged to Ernest; He never got that money. "Flo" & "Pharon" stole it, some $11,454.81.

On about 1-19-73, Charlie and Pharon took Ernest from the nursing home (now Hilltop) near

Ft. Worth and they drove Ernest to the Pilot Point National Bank where they got Ernest to withdraw $18,000.00 from his account. Then, they,Charlie & Pharon, deposited that money in their account in the Fort Worth S & L Ass'n.

Also on 1-19-73, Charlie & Pharon got Ernest to sign Deed No.19329,Vol.686,pages 165 -166, Denton County, Tx.Deed Records conveying their interest in the Aubrey, Texas Farm to Pharon, except for a life estate. That deed deed was used by the surveyor Joy Green of Schoell, Field & Assoc.,Inc. of Denton , Tx. (hired by John R. Lively, "Flo's" attorney & later they were paid out of Ernest's estate by the Successor Administrator, Johnny W. Richards on Judge Burnett's order, $3,178.17) as a bases of their survey on the ground. Further, that deed, #19329, is null & void due to the insufficient description of the land in it. For example: the Fifth Tract: Being a part of the John Jordan Survey in Denton County, Tx. and described as follows: (NOTE: Then there is no description what-so-ever follows;)

On 4-26-75, which was after Charlie died on 8-26-74, Pharon "Sam, S. C." Catlett got Ernest to sign a "QUIT CLAIM DEED", #6521, vol. 742, pages 782 & 783,Deed Records, Denton Co., Tx., in which Ernest turned over - gave up his rights, to lands in "TARRANT" County, Tx.(NOTE: the land is in Denton County, Tx. with insufficient descriptions of that land and without any consideration from Ernest & at a time when Ernest was incompetent.

Florence Iona Catlett is also necessary because on 9-23-76 she became Administrator with will annexed of the Estate of Charlie Catlett, Dec'd. with bond of $50,000.00. (R.27).

With that background, the "Heir" will move ahead to the matter of the closing of Ernest's estate by Judge Robert M. Burnett and the extrinsic frauds committed by him against the "Heir" in collusion with "Richards" and others.

(1) - M. Wiley Catlett is the heir of decendent, Ernest Luther Catlett, Deceased; therefore, he is an interested & necessary & indispensable party in Ernest's estate. V.A.T.S.

ProbC.,Sects. 3(o) & 3(r)

"Title to property is not suspended on the death of the owner. The law effects the devolution to the heirs at law, and that devolution takes place instantly on the intestate's death, and once the estate vests in the heir it is not within the power of the legislature to disturb his rights therein." F.A.T.S.,ProbC., Sect. 37

Further see, the April 22, 1986, "JUDGMENT DECLARING HEIRSHIP/Approved (R.193); V.A. T.S.,ProbC.,Sects 49 & 50, The "Heir" was never notified of those proceedings, nor were they held in accordance with Texas law (R.193).

"Whether property passes under will or by descent & distribution, title vests immediately on death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959) CA 5th Dist.) 329 SW2d 783,writ.ref.n.r.e.

Also in this connection see, Item #7 of "Richards" ACCOUNT FOR FINAL SETTLEMENT, FILED July 17, 1990 (R.241)

(2) - On February 19, 1991, "Richards" filed his "APPLICATION TO Close Estate and to Discharge Personal Representative" which was not mailed to the "heir" until @ AUG. 15, 1991 (R.274) which was received by the "heir" @ AUG. 19, 1991. APPENDIX "K"

(3) - On August 6, 1991, (Note:"February" is lined out, without Judge Burnett's initials, using a rubber stamp signature) his "ORDER CLOSING ERNEST'S ESTATE & DISCHARGING REPRESENTATIVE" (R.276) which "Richards" mailed to the "heir" @ AUG. 15, 1991, received @ AUG. 19, 1991. APPENDIX "J"

Judge Burnett's 8-6-91, ORDER CLOSING ESTATE (R.276,Item#1; APPENDIX "J") is certainly a final appealable order. TEX.PROB.CODE, Sect.5 (e) which provides: "All final orders of any Court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals."

(4) - On SEPT. 4, 1991, the "heir" FILED his "MOTION to "Set-Aside" (R.277, Item #2) "BURNETT'S" ORDER OF AUGUST 6, 1991 (R.276,Item #1) CLOSING ERNEST'S ESTATE & DISCHARGING REPRESENTATIVE", In Re: The Estate of Ernest Luther Catlett, Deceased, No.77-2726-1, Tarrant County, Texas, Probate Court No. 1, which became final by operation of law after 30 days.

(5) - On March 22, 1984, Judge Burnett

signed his "ORDER DISCHARGING SARRAINE KRAUSE (former Successor Administrator) and APPOINTING SUCCESSOR ADMINISTRATOR", Johnny W. Richards" II with bond at $8,000.00 (R.119). The application was also filed on March 22, 1984.(R.119)

(6) - On March 22, 1984, Sarraine Krause filed her Application for Payment of Administration Expenses of $3,891.97 of which $3,750.00 was for her attorney's fees, (R.113)and on 3-22-84, Judge Burnett signed his order approving same. (R.113)

(7) - (ON~ NO DATE OF SIGNING~ORDER by "BURNETT" (R.103) set hearing on March 22, 1984 also (ST/F - II) re: the lawfirms Application of JAN. 12, 1984.(R.109)

(8) - NO DATE OF SIGNING ORDER by "BURNETT" (R.121). The same refers to hearings on March 22, 1984 (ST/F - II) Re: The lawfirm's Application of 1-12-84 to Sell land at which testimony was taken. There are no exhibits of the two alleged tracts of land in Denton County, Tx. of 31.2 acres & 7.8 acres total of 39 acres,

alleged to belong to the estate, in the law-firm's application of 1-12-84 or in the ST/F-II. p.5, lines 6-21 (R. 109,Item #47)

(9) - June 18, 1984, Filed, "Richards" "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" with Exhibit "A" contracts. (R.123,Item#38 (Note: "Richards'" June 18, 1984 Application was served only on Attorney Douglas R. Hudman who on 1-12-84 filed an"Application to Require Representative to Apply for Sale of Real Property" for his clients, the Law Firm of Brown, Herman, Scott, Dean, and Miles (R.109,Item #47)/ Judge Burnett signed his ORDER on July 18, 1984 (R.123,Item#37, APPENDIX "T"

(10) - October 19, 1984, "Richards" alledgedly sold some 39 acres - without any legal partition - to some friends & clients of his the AUBREY GROUP, made up of Savid J. McGilvray, Joseph R. Kilianski and Sharon L. Tolbert for about $80,000.00, Warranty Deed No.57214, Real Property Records, Denton Co., Texas, vol. 1511 pages 17-20

(11) - October 25, 1984, "Richards, II" filed his "FREEZE AGREEMENT" depositing in No. 301-4206 with the Allied Northeast Bank, National Ass'n., Fort Worth, Tx. $77,560.66. The balance of the $80,000.00 sale of the purported 39 acres without any legal partition of the "heir's" 225.1 acre farm to the AUBREY GROUP. (R.134,Item#34)Appendix "U"

(12) - The next step in the Probate Code ismissing (R.5). There is no "REPORT OF SALE" as required by V.A.T.S.,ProbC,Sect 353. Hence, that sale is absolutely void.GALLENMORE v. OWEN (Tex.Civ.App.1934) 69 SW2d 469 at 472; Art. 3302,R.S.1925; TEAGUE v. SWASEY, 46 TEX.CIV.APP. 151, 102S.W.458. Further "Richards" $8,000.00 bond was notincreased on a sale of land for about $80,000.00 net $77,560.66,V.A.T.S.,ProbC, 354.; CLAY v.FIELD (1885)115US 260,6 S.Ct. 36, 29 L.Ed. 375 at 376.

(13) - On NOV. 26, 1984, "Richards" filed his "APPLICATION FOR ORDER TO PAY CLAIMS" (R.135,Item#32/ORDER Item#33, DEC. 10, 1984

(14) - On FEB. 11, 1985, "Richards" filed, APPLICATION FOR PAYMENT OF FEES & COSTS

Successor Admin. "Richards'" own attorney fees. (R.161,Item#30) / ORDER of 2-20-85, "Richards" $2,400.00 in hisown attorney's fees(Item#31, R.161)

(15) - JAN. 25, 1985, FILED, $42,228.00

"AUTHENTICATED CLAIM OF JOHN R. LIVELY" (R.139,Item#28, ST/F - 2-8-85 with Exhibit "A" date, event, time ; ORDER to pay Lively

$41,684.00, Appendix "N"; $42,228.00 Claim, Appendix "Q"; ST/F - 2-8-85

(16) - OCT. 25, 1982, FILED, $ 8,840.00

"AUTHENTICATED CLAIM OF FLORENCE IONA CATLETT" for John R. Lively's attorneys fees((R.68A, Item#53) Which alleged claim was REJECTED IN FULL by the Administrator of Ernest's estate on NOV. 15, 1982 (R.68H,Item#54)

(17) - FEB. 20, 1985, from "Richards' record in No.77-2726-1 it appears that no authenticated claim was filed by Steven J. Williams, former attorney for Ernest's estate; however, ST/F was held on 2-20-85 in which he allegedly claim attorney fees of $5,172.48. (R.167,Item#29) was ORDERED paid to Williams by Judge Burnett, on MARCH 11, 1985

(18) - On OCT. 18, 1985, FILED,"Richards'" Annual Account of Successor Dependent Administrator covering his acts ? ?through October 15, 1985. Total Claims Paid $66,373.09 See Peggy Ramsey, Official Court Reporter,

Probate Court No. 1, Tarrant County, Tx., No. 77-2726-1, Peggy Ramsey's AFFIRMATION that no hearings were held on Annual Account of "Richards'" thru OCT. 15, 1985 covering the payment of some $66,373.09 out of Ernest's estate. Under Item IV. A) - Lively owes the estate $1,233.33 which Lively FAILED to mention as an "offset" in his 1-25-85 AUTHENTICATED CLAIM OF JOHN R. LIVELY (15) page 24 herein, Appendix "G", (R.139,Item#28)

(19) - On FEB. 13, 1986, FILED, Surveyor's, SCHOELL, FIELD & ASSOCIATES, INC. of Denton, Tx."MOTION and ORDER for Payment of CLAIM" for $3,178.17(R.183,Item#20) Also on 2-13-86 Judge Burnett Ordered (Appendix "S") "Richards'" to pay $3,178.17 to the surveyor within 10 days and he did. (Note: this was a survey made at Flo's attorney's request in her 12-3-81 PARTITION ACTION in Denton County, Tx. No.81-8158-B, 158th D. C. and in which Judge Narsutis' three (3) judgments were reversed & remanded on May 18, 1983 in the OPINION of the Court of Appeals, Ft. Worth,Appendix "L". Attention is called to the fact that the Exhibit "A" mentioned as incorporated in their purported claim against Ernest's Estate was not. "Lively wrote in his Claim(ST/F - 2-8-85 under Date: SEP. 21, 82, "Telephone conference with J. C. Green and letter Re: preparation of survey."

(20) - APR. 29, 1988, FILED, $8,473.23

"AUTHENTICATED CLAIM OF WINN,BEAUDRY & VIRDEN (R.207,Item#15) which lawfirm never worked for Ernest's Estate.(R.218,Item#14) Claim REJECTED IN FULL ($8,473.23) by Johnny W. Richards the Successor Administrator on MAY 18, 1988

Under Texas law, V.A.T.S.,ProbC.,Sect.313, 308, 310, ". . . unless claimant institutes suit on a rejected claim by representative of an estate within ninety days after rejection, his claim is barred - forever." RUSSEL v. DOBBS (1942) 63 TEX. 282, 354 SW2d 373.

(21) - FEB. 12, 1991, PAID, $7,561.14

WINN, BEAUDRY & VIRDEN by the Successor Administrator, Richards; ST/F - 2-12-91,VOL.I & II as will be noted under item (20) above Richards REJECTED IN FULL that lawfirms $8,473.23 on MAY 18, 1988; therefore, their sham & fraudulent claim is barred under Texas law.

Further, (ST/F - 2-12-91, VOL. II, Exh., R-6, fails to recite parts of V.A.T.S.,ProbC., Sect. 301 as required. For example, there is no mention of the "offset" of $8,649.04 paid paid by the "heir" personally to that lawfirm.

"An affidavit that fails to state any one of the facts required to be stated . . . is fatally defective . . . WALTERS v. PRESTIDGE, (1867) 30 TEX. 65."

SUMMATION OF THE STATEMENT

Your Petitioner, the "heir", brought this appeal from Judge Burnett's "final", "ORDER CLOSING ESTATE & . . ." (APPENDIX "J", p.20 (3) herein; R.276) signed , with,February lined out on AUG. 6, 1991. It was way back on FEB. 19, 1991, that "Richards" filed his "Application " of same (APPENDIX "K", p.19 (2) herein; R.274, Item #3). Then, on SEP. 4, 1991, the "heir" filed his "MOTION to "Set-Aside" Judge Burnett's 8-6-91 ORDER CLOSING ESTATE & DISCHARGING PERSONAL REPRESENTATIVE"(R.277,Item#2).

The "heir" brought this action against both of them for their breach of duty & responsibility as trustees to the beneficiary, the "heir", a citizen of Illinois, and for damages in excess of $600,000 in actual, punitive plus interest. And against Florence Iona Catlett ("FLO") for fraud and as the purported living co-tenant of a 5/6th interest (undivided) in the "heir's" grandfather's & grandmother's AUBREY, TEXAS FARM. "FLO'S" attorney is John R. Lively, who also made a sham, $42,228 claim against "Ernest's estate". (For more details,

see pages 2 thru 12 in the "heir'S" brief, Filed: FEB. 3, 1992 containing background facts, helpful in understanding this matter, being complex.

Simply put, this action is about the rape of an estate and its "heir" of Illinois.

a) - On 10-1-91, the Probate Clerk certified the receipt of cash deposit in lieu of bond on appeal. APP.R.PROC.,R.48(R.283)

b) - On 10-2-91, the "heir's" motion for appeal was perfected in No.2-91-213-CV(R.286)

c) - On 10-16-91, the "heir's" notice of documents to be included in the transcript was filed. (R.288) The delivery of a Statement of Facts (ST/F - 5-13-14-81) was mailed on 10-11-91 (R.298)

d) - On 10-22-91, the "heir's" Request for Statement of Facts (R.295). On 10-22-91, the "heir" filed Supplement to Request to include the docket sheets & court's minutes.(R.297)

e) - On 11-20-91, the "heir" Requested a Statement of Facts of No.81-8158-B, Denton Co., Tx. & to take Judicial Notice of the MAY 18, 1983 OPINION (APPENDIX "L")

f) - On 11-27-91, filed "Affirmation of Peggy Ramsey (R.301)(APPENDIX "I")

g) - On 12-3-91, the "heir" filed "Mot.for Ext. of Time to file transcript (R.302) & to take JUDICIAL NOTICE in No.81-8158-B)

h) - On 12-9-91, ORDER, GRANTED, Mot. to Ext. Time to file transcript to 1-6-92(APPENDIX "H") but DENIED to include as a part of this case ST?F in No.81-8158-B, DentonCo.,Tx., 158th D.C., which is "FLO'S" partition action. On MAY 18, 1983, the Ft. Worth Appellate Court signed their OPINION in No.2-82-212-CV which REVERSED & REMANDED Judge Narsutis' three

judgments of OCT. 4-4-14-82 & with all costs against "FLO"(APPENDIX "L") plus the same appellate court refused to take JUDICIAL NOTICE of their own unpublished OPINION of MAY 18, 1983. (APPENDIX "L"; R.302)

(i) - On 12-20-91, the "heir" filed his Exception to Part of that Court's ORDER of 12-9-91. h) above.

j) - On 12-31-91, ORDER, OVERRULED the "heir's" Exceptions (APPENDIX "G")

k) - On JAN. 3, 1992, the transcript was filed by Probate CourtClerk (R.1)

l) - On FEB. 7, 1992, Lively filed "FLO'S" "Motion to STRIKE appellant's Brief & for Damages" (same filed 4 days late). which is null & void because a motion to STRIKE the whole pleadings is in effect a general demurrer. CITY of BROWNVILLE v. GALVAN, 139 TEX. 128, 162 SW2d 98 at 99-100 (TEX.SUP.CT. 1942), where that TEXAS SUPREME COURT said: "The use of a general demurrer has been eliminated from Texas proctice, and abolished in Texas., TEX.R.CIV.PROC.,R. 90; BANKERS v. JEFFERSON COUNTY, NO. ONE, 277 SW2d 130 (Tex.Civ.App. 1950), n.w.h. Therefore, "FLO'S" motion to strike is null & void, as is Justice Day's FEB. 25, 1992 OPINION & JUDGMENT (APPENDIX "E"); since he based his OPINION on that null & void motion of "FLO'S (FEB. 7, 1992) Justice Day was without authority, COMET ALUM-

INUM COMPANY v. JUDGE DIRBEL, (TEX.SUP.CT. 1970) 450 SW2d 56 at 59, where the Texas Supreme Court said: ". . . Therefore, the nunc pro tunc judgment of 3-3-69, purporting to eliminate the item as clerical error was void; and the subsequent judgment of 3-28-69 granting Levine a new trial is likewise void. (Emphasis Added)."

m) - Further, on FEB. 7, 1992, Lively also filed "Flo's" "Motion to Dismiss for want of Jurisdiction" pursuant to Rules 60(a) & 72, TEX. R.APP.PROC.; also (4 days late). (R.1) The transcript was filed JAN. 3, 1992, k) above

Further, Lively's appearance before the Appellate Clerk to file "Flo's" two motions on FEB. 7, 1992 cured any alleged personal Jurisdictional problem with "FLO". YORK v. STATE of TEXAS, (1890) 137 US 15 at p.16, 34 L.Ed.604, at p. 605, 11 St. Ct. 9. (Lively never asked for an extension of time in that regard.

n) - On 2-18-92, ORDER to Ext. Time to File a Response to Appellee's Motion to Strike GRANTED IN PART, Appellant's responses due 2-28-92 . . . (APPENDIX "F"

o) - On FEB. 25, 1992, Justice Day without any date of signing, as such, OPINION & JUDGMENT rendered (STAMPED DATE) (APPENDIX "E"

p) - On FEB. 21, 1992, Tim Curry, Criminal District Attorney of Tarrant County, Texas filed Judge Burnett's (19 day late) "Motion to Join in Motion and to Adopt Brief's of "FLO'S"

Further, Tim Curry's appearance before the APPELLATE CLERK to file Judge Burnett's motion cured any alleged personal Jurisdictional problem of Judge Burnett. YORK v. STATE of TEXAS,

137 US 15 at p.16, 34 L.Ed. 604 at p.605, 11 S.Ct. 9; TEX.R.CIV.P.,Rule 121.

q) - On 3-16-92, ORDER, DENIED the "heir's motion for leave to have his two motions mailed FEB. 26th & 27th, 1992 considered as a motion for rehearing. (APPENDIX "D"

r) - On 3-23-92, the "heir" filed his Mot. for Ext. of Time for the "heir" to file his Motion for Rehearing"."

s) - On 3-26-92, ORDER, GRANTING the "heir's Motion for Time to file his Motion for Rehearing to APR. 13, 1992 (APPENDIX "C"

t) - On 4-13-92, the "heir" filed his Motion for Rehearing."

u) - On 4-22-92, ORDER, OVERRULING . . . the "heir's" Motion for Rehearing, OPINION & JUDGMENT of FEB. 25, 1992 stands unchanged. (APPENDIX "B.1"

v) - On MAY 21, 1992, the "heir" filed his "APPLICATION for WRIT of ERROR in the SUPREME COURT of TEXAS."

w) - On JUN. 24, 1992, the SUPREME COURT of TEXAS denied in No.D-2437, Application for writ of error with thenotion, "writ denied". (APPENDIX "B"

x) - On SEP. 9, 1992, the SUPREME COURT of TEXAS overruled petitioner's motion for rehearing of appelication for writ of error in No.D-2437. (APPENDIX "A"

See, WILLIAMSON v. BERRY, 1850, 8 How. 495, 12 L.ed. 1170 at p.1189 where the U. S. Supreme Court said: "But it is equally settled rule in Jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon and brought before the later, by a party claiming the benefit of such proceedings."

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

FIRST: Since, the 5th Amendment of the U. S. Constitution states: " . . . that no person shall be deprived of life, liberty or property without due process of law and the 14th Amendment states: " Sect. 1, Due Process of Law . . . nor shall any state deprive any person of life, liberty, or property, without due process of law.", the instant question is, did the State of Texas through its appointed or elected officials, Judge Robert M. Burnett, Probate Court Number One, Tarrant County, Texas and Johnny W. Richards, II, the duly appointed and sworn, Successor Administrator of the Estate ofErnest Luther Catlett, Deceased in No.77-2726-1 byappointment on March 22, 1984 (R.119,Item$41) did make his "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" on June 18, 1984 (R.123,Item#38), approved on July 18, 1984 by Judge Burnett, to sell some alleged 39 acres of land purported to belong

to the Estate of Ernest on October 19, 1984 and he did sell that land to some clients, without any "notice" or "hearing" to the real owner, "the heir", M. Wiley Catlett, a citizen of the State of Illinois (R.134,Item#34); hence, did they divest "the heir" of the title which vested in "the heir" at the intestate's death; thereby, depriving "the heir" of his property without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution?

Arguments: (a) - "Wiley" is the heir of decendent Ernest Luther Catlett, Deceased; therefore, he is an interested & necessary & indispensable party in Ernest's estate, V.A.T.S., ProbC.,Sects. 3(o) & 3(r).

"Title to property is not suspended on the death of the owner. The law effects the devolution to the heirs at law, and that devolution takes place instantly on the intestate's death, and once the estate vests in the heir it is not within the power of the legislature to distrub his rights therein." V.A.T.S.,ProbC.,Sect.37.

In Texas, the heirs are the real owners of the real property upon the death of their ancestor; BRUNSON v. BRUNSON, 1963,(CA 7th Dist)

372 SW2d 761,writ,dism.w.o.j.; Whether property passes under will or by descent & distribution, title vest immediately on the death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959,CA Dist.) 328 SW2d 783, writ,ref.n.r.e.; KITTREDGE v. RACE, 1875, U.S.Supreme Ct., 92 US 116, 23 L.Ed. 488, 490."

Further see, the April 22, 1986, "JUDGMENT DECLARING HEIRSHIP/APPROVED (R.193); V.A.T.S. ProbC.,Sects 49 & 50. It is important to note herein that the "heir" was never notified of any such proceedings and they were not in accordance with Texas law (R.193). Also in this connection see, Item #7 of "Richards" ACCOUNT FOR FINAL SETTLEMENT, FILED, July 17, 1990(R.241).

The Certifications or Proofs of Service on the following "APPLICATIONS" clearly shows that neither Johnny W. Richards, II, Successor Dependent Administrator, nor former Successor Administratrix, Sarraine S. Krause, nor the attorney, Douglas R. Hudman for the lawfirm of Brown, Herman, Scott, Dean & Miles "notified" "the heir", M. Wiley Catlett of the State of Illinois of those "APPLICATIONS" filed:

(1) - FILED: 1-24-84, "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY" (R.109,Item#47)

(2) - FILED, 3-22-84, "APPLICATION FOR PAYMENT OF EXPENSES OF ADMINISTRATION" (R.113,Item#44/ ORDER

(3) - FILED, 3-22-84, "APPLICATION TO DISCHARGE PERSONAL REPRESENTATIVE AND APPOINT A SUCCESSOR ADMINISTRATOR"(R.119,Item#42/ORDER

(4) - FILED, 6-18-84, "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" (R.123,Item#38),ORDER APPROVED, 7-18-84; APPENDIX "T"

(5) - FILED, 11-26-84, "APPLICATION FOR ORDER TO PAY CLAIMS" (R.135,Item#33), ORDER(R.135, Item#32), FILED, 12-10-84

(6) - FILED, 10-19-84, DEED No.57214,vol1511, pages 17-20, real property records, Denton Co., Tx., Johnny W. Richards, II, Successor Admin. - SOLD - some alleged 39 acres of land out of the 225.1 acres of "the heir's" grandfather's and grandmother's AUBREY, TEXAS FARM purported to belong to Ernest's Estate which he sold to the AUBREY GROUP; made up of Sharon L. Tolbert, David J. McGilvray & Joseph R. Kilianski for a net of $77,560.66

(7) - FILED, 10-25-84, FREEZE AGREEMENT, "Richards" deposited $77,560.66 in the Allied Northeast Bank.(R.134,Item#34, APPENDIX "U"

"RICHARDS'" DISCRIMINATES AGAINST "the HEIR"

For proof, see "Richards" own "APPLICATION BY SUCCESSOR ADMINISTRATOR FOR PAYMENT OF FEES AND COSTS" filed FEB. 11, 1985 (R.161,Item#31) including ten conferences. Non included "the heir", the real owner of that land.

3-15-84 - conference with Krause
3-15-84 - conference with Judge Burnett
5-30-84 - conference with Sharon Tolbert
7-11-84 - conference with Tolbert
7-17-84 - conference with Mary Lyday
7-27-84 - conference with Tolbert
10-10-84 - conference with Elaine
1-11-85 - conference with Judge Burnett
1-17-85 - conference with Judge Burnett
1-25-85 - conference with John R. Lively, (Flo's) attorney

Further, during that same period "Richards" own records (R.161,Item#31/Order#30) shows that he had about 58 phone conversations with various persons; however, not once did he "notify" the real owner of that land, "the Heir". MANSELL v. SAUNDERS (CA5th - 1967) 372 F2d 573 at 576 "Considering this delaying tactic, the fact of notice to every garbage operator except Mansell . . ."

"It is elementary that title to the land belonging to a decedent does not VEST in the administrator, but in the heir." JONES v. GILLIAN (Tex.Civ.App.1918) 199 SW2d 694, 698; V.A.T.S.,ProbC.,Sect. 37.

Successor Administrator, Richards and Judge Robert M. Burnett and Attorney John R. Lively for "Flo" and the others involved in that conspiracy to defraud, knew well where the "heir" was located in Highland Park, Ill. "The touchstone of due process is protection

of the individual against arbitrary action of government." WOLFF v. McDONNELL (1974) 418 US 539, 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952; MULLANE v. CENTRAL HANOVER TR. CO. 339 US 306 at 313, 94 L.Ed 865 at 872, 70 S.Ct. 652; READ v. GEE (Tex.Civ.App. Ft. Worth 1977) 551 SW2d 496 at 498 where Chief Justice Massey, held that judgment order would be reversed for want of due process of law in proceedings at which it was rendered." U.S.C.A.Const. Amends. 5, 14; Vernon's Ann.St.Const.,art. 1, Sect. 19 , RNRE

"A court of probate in ordering a sale of any real estate of a desceased person, is exercising a special statutory power and not any that pertains to the ordinary settlement of the estate."

See on p.714, where the SUPREME COURT OF OKLAHOMA said: "Since a sale of realestate by an administrator divests the heir of the title which vested in them at the intestate's death, an order for such sale can only be made after notice to the heir's, otherwise, the property would be taken without due process of law and therefore . . . is absolutely void, and deprives them of due process of law in violation of the Fourteenth Amendment to the Federal Constitution. SEAL v. BARNES (OKLA.SUP.CT. 1934) 168 OKLA 550, 35 P2d 704 at 713 & 714.

See also ARMSTRONG v. MANZO, 380 US 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 A divorce case

from El Paso County, Texas where no notice of the pendency of the proceedings was given to the divorced father of the child, although the parties initiating the adoption well knew his precise whereabouts.

On certiorari, the SUPREME COURT OF THE UNITED STATES reversed.

"A fundamental requirement of due process is 'the opportunity to be heard.'"

"An elemental and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Hence, in the instant case, the State of Texas through its Probate System in which "Richards" and Judge Burnett did sell 39 acres of land which vested in the "heir" at his father's death did divest the "heir" of his property without any "notice" or "hearing" to the "heir"; thereby, taking his land and depriving the "heir" of due process of law in violation of the 5th and 14th Amendments of the Federal Constitution and rendered the decree constitutionally invalid. ARMSTRONG v. MANZO, 380 US 545,14 L.Ed2d 62, 85 S.Ct.1187.

SECOND REASON: In Texas, "The Court administers the estate, not the Administrator." and there is a special confidential and fiduciary relationship between the Probate Court Judge, "Burnett", who really administers the

estate MURPHY v. CARTWRIGHT (CA5 TEX. 1953) 202 F2d 71 at p. 73". . . As executor of the estate, appellee occupied a position of trust to all parties having an interest in the estate.

Because of his confidential & fiducial relationship to appellant he owed her the highest degree of fidelity. STRATES v. DIMOTSIS (CA5) 110 F2d 374 . . . The law will not permit him to take advantage of those whom he represents. THAW v. THAW, 2nd Cir. 27 F2d 729; . . . "

and its sole "heir"; hence, the question is: Can Probate Court Judge Burnett, who outside of his immunity be held accountable under law where he threatened the "heir" by saying: "I'll SEE THAT YOU DON't get anything from your father's estate." ; and where Judge Burnett with the assistance of "Richards" and others, in collusion, Judge Burnett carried out that threat, made outside of his immunity?

It was on August 19, 1982, after the hearings were finished on Attorney Williams,

"Motion to Withdraw as Counsel in Ernest's estate" and at a time when the estate had a Writ of Error before The Supreme Court of Texas, which was outside of Judge Burnett's immunity, that Judge Burnett threatened the "heir" an Illinois citizen by saying: "I'll see that you don't get anything from your father's estate." With the assistance of "Richards" and others in collusion Judge Burnett carried out that threat.

The "heir" never even got that $30.30 shown in "Richards" "APPLICATION TO CLOSE ESTATE & TO DISCHARGE PERSONAL REPRESNTATIVE" (R274).

Petitioner, the "heir", will show this Court a few facts contained in his SEPT. 4, 1991 "Motion to "Set-Aside Judge Burnett's AUG. 6, 1991 ORDER CLOSING ESTATE . . ." which proves that "Richards" with the approval of Judge Burnett did practice a pattern of waste and of the squandering and the payment of sham claims in the "heir's" father's estate:(R.277)

See, Item #2., On FEB. 12, 1991 the Trial Court ORDERED "Richards" to pay the law firm of Winn, Beaudry & Virden $7,561.14 with the unfounded reason that they were former attorneys for M. Wiley Catlett.

a) - That firm never had a contract or worked for Ernest's estate; therefore, that firm had no standing to even bring a claim.V.A.T.S. ProbC.,Sect.3(r);

b) - However, on @ April 29, 1988 that firm filed a claim for $8,473.23 against Ernest's estate with "Richards";

c) - On MAY 12, 1988, "Richards" REJECTED their, 4-29-88, purported claim of $8,473.23; hence, Judge Burnett had NO AUTHORITY to order "Richards" on FEB. 12, 1991 to pay Winn, Beaudry & Virden $7,561.14, Probate Code only gives the Probate Court the right to hear approved claims, V.A.T.S.,ProbC.,Sect.313 which says that unless a claimant institutes suit on a claim rejected by the representative of an estate within 90 days after the rejection, his claim is barred. 18 TEX.JUR2d,Sect.639. The terms of the statute are mandatory. ASKEY v. POWER (CA)21 SW2d 326, revd. on other grounds 36 SW2d 446.(R.218)

d) - Since that law firm never filed a suit on their REJECTED claim of $8,473.23 within 90-days; their claim is barred forever; V.A.T.S.,ProbC.,Sect. 313; hence Judge Burnett's ORDER of 8-6-91 is a nullity and void.(R.276) (R.274, ST/F -V) See also pp. 27-28 in "heir's" brief - See also "Richards" application of 2-19-91 where Winn, Beaudry & Virden agreed to take $7,561.14 so that "Richards" could be paid another $1,000.00 more.(R.274,R.276)

e) - Further, M. Wiley Catlett, the "heir" paid to Winn, Beaudry & Virden $8,649.04 out of his own funds and he has the cancelled checks to prove it. Further, since that sum of $8,649.04 was not included as an "offset" as required by law in authenticated claims against the estate; hence, the same is null & void.

An affidavit that fails to state any one of the facts required to be stated by,V.A.T.S., ProbC.,Sect.301 is fatally defective.WALTERS v. PRESTIDGE (1867)30 TEX. 65; SMALL v. SMALL (Tex.Civ.App.1968) 434 SW2d 940,ref.n.r.e.

For another example of waste & the squand - ering & of a sham claim, see the alleged, "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00 filed improperly "against this estate" not against the personal representative of the estate as required in Texas law. FILED on JAN. 25, 1985 (R.139,APPENDIX "Q") and on FEB. 8, 1985, "Richards" (R.168, APPENDIX "R") paid Lively $41,684.00, approved.

a) - Lively filed that purported claim against "this estate"(Not a legal entity)PRICE v. ANDERSON (1975 TEX.) 552 SW2d 690 at 691.

b) - The "heir" was not "noticed" on Lively's sham claim of $42,228.00; hence, violating the "heir's rights & priviledges under the 5th & 14th Amends. of the U. S. Constitution.

c) - Lively worked as attorney for "Flo" the adverse party, not for Ernest's estate. Further, Lively failed to include $1,233.33 as an "offset" in his purported claim which Lively owed Ernest's estate.

d) - On DEC. 16, 1980, Lively wrote to Broiles (former attorney for the estate) (R.31,Item#58), see page 1, where he states: ""As you can tell, the judgment does <u>not</u> recite the legal description at this point." So, Lively, knowingly put those insufficient description in all of those documents, orders & judgments in QUESTION "V", herein.

On NOV. 15, 1982, the Administrator filed his REJECTION in full with reasons.(R.68H,) on OCT. 25, 82(16)p.24 herein "Flo's"/claim. Lively didn't have any contract or judgment against "this estate" and he knew it when he filed that purported claim on 1-25-85 for $42,228.00. Lively was never a party in any of the proceedings. He is the attorney for "Flo" the purported living co-tenant of a 5/6th interest in the "heir's" grandfather's farm. As stated under item c) herein, Lively failed to include the $1,233.33 which he owed for "Flo" as an "offset" in his affidavit.

Therefore, his purported claim of 1-25-85 is fatally defective. WHITMIRE v. POWELL (Tex.Civ.App.1909) 117 S.W.438; WALTERS v. PRESTIDGE (1867) 30 TEX. 65.

There are the further examples of waste& squandering & sham claims paid by "Richards" with the approval of Judge "Burnett", such as: On FEB. 13, 1986, Surveyor's SCHOELL, FIELD & ASSOCIATES, INC. of Denton, Texas filed a $3,178.17 claim for their services in Probate Court No. 1, Tarrant Co., Tx., APPENDIX "S", and in No.81-8158-B, Denton Co., Tx.,APPENDIX

"V" , $2,043.75 , survey and $1,134.42 interest at 18% per year, total, $3,178.17 also. That survey was contracted for by "Flo's" attorney as proven by his own words in his JAN. 25, 85 claim for $42,228.00, Exhibit "1" therein. It was Lively who contacted and wrote to the surveyor, J. C. Green; date: SEP. 21, 82, "Telephone conference with J. C. Green and letter re: prepartion of survey". Hence, it was Lively who actually hired the surveyor's for the commissioners on Judge Narsutis' reversed & remanded three (3) judgments of OCT. 4-4-14-82, COURT of APPEALS, No.2-82-212-CV(81-8158-B below) Denton Co., Tx. unpublished, APPENDIX "L". Unauthenticated claim filed against estate is void,V.A.T.S.,ProbC.,Sect. 301. MAY 18, 1983 is the date of that OPINION.

This is a clear example of fraud against Ernest's estate and it "heir", M. Wiley Catlett.

CARTWRIGHT v. MINTON (Tex.Civ.App.1958) 318 SW2d 449 RNRE, at 454, "The same public policy that in general sanctions the avoidance of a promice obtained by deceit strikes down all attempts to circumvent that policy by means of contractual devices. BATES v. SOUTHGATE, 308 Mass.170, 31 N.E.2d 551,558, 133 ALR 1349, quoted

quoted with approval by our Texas Supreme Court in Dallas Farm Machinery Co. v. REAVES, TEX., 307 SW2d 233."

On March 11, 1985, Judge Burnett signed his OR DER to pay attorney Steven J. Williams, $5,172.48 in fees without any application from "Richards" (R.167,Item#29)(ST/F-2-20-85).

Further, the "heir" finds no authenticated claim for attorney Williams' purported claim in the file of his father's estate for that $5,172.48 paid to Williams on FEB. 20, 1985 (R.168,Item#26). Hence, the law of Texas states: "Unauthenticated claim filed against estate is void. V.A.T.S.,ProbC.,Sect. 301, CLAIMS MUST BE AUTHENTICATED.

Further, Williams' Exhibits(ST/F -2-20-85) are not understandable. There is no "offseT" for the $10,830.17 which the "heir" paid to Steven J. Williams out of the "heir's" own personal funds.

"A judgment of probate court authorizing payments (R.167,Item#29) of claim which had not been presented to estate or rejected by administrator of estate was void. CLEMENTS v. CHAJKOWSKI (1948) 146 TEX. 408, 208 SW2d 841; V.A.T.S.,ProbC.,Sect. 298. Claims Against Estate of Decedents and Wards.

Judge Burnett is a necessary party, not only, because of his threat against the "heir", but because, in Texas, he really administers the estate. JONES v. GILLHAM (TEX.SUP.CT.1919) 212 SW 930, where the Texas Supreme Court said: "The Court administers the estate, not the administrator."

Judge Burnett had the power to restrain "Richards"; however, he failed to do his duty to the "heir". Such principles are not new. As early as 1873, in COOK ADM. v. CARSON & LEWIS, 38 TEX. 284, on page 287 the TEXAS SUPREME COURT HELD:

"An administrator, no more than an individual acting for himself, will be allowed to pursue such a course in the management of the trust in his hands as to do gross injustice to other parties. Our laws regulating the settlement of the estate of deceased persons will allow no such thing, much less do they require it."

In Corpus Juris Secundum, Executors & Administrators, vol.33, H. WASTE, CONVERSION OR EMBEZZLEMENT OF ASSETS, Sect. 242, see:

"An executor or administrator is personally liable for waste, or conversion or similar loss to the estate, in some instances even where the misconduct is that of a third person; and a third person may be liable for the misconduct of the representative, where such third person knowingly accuired the property or participated in the misconduct.

"An executor or administrator is personally liable to those who are interested in the estate as heirs . . . for waste, or for conversion, misapplication or embezzlement of the assets of the estate."

and on page 1250, Sect. 243. Waste

"Waste is any mismanagement of the estate of a decedent, or other breach of duty, resulting in loss, by an executor or administrator. In a proper case a representative may be restrained from committing waste."

Judge Burnett failed to restrain "Richards"

Successor Administrator, "Richards" retained himself, J. W. Richards, attorney and paid himself a total of $8,275.00 in fees as follows:

$1,000	- Paid on FEB. 19, 1991(R.274)
4,875	- Paid on MAY 1, 1989 (R.227)
2,400	- Paid on FEB. 20, 1985 (R.161)
$8,275	Total attorneys fees paid to himself

The general rule is that where a lawyer becomes executor or administrator, his compensation as such is in full for his services, although he exercises his professional skill therein; and even if he performs duties he might have hired an attorney to perform, he is not entitled to attorney's fees.

This rule is one of public policy, grounded upon the principle that a trustee shall not place himself in situation where his interests

conflict with his duty as fiduciary. 21 Am.Jur. - Executors & Administrators, Section 532, Sect. 2 Summary; Re: Parker's Estate (1926) 200 Cal. 132, 251 P 907; 49 A.L.R. 1025; In Re: Hallenback's Estate (U.S.Dist.Ct.,Dist. of Col.1954) 122 F.Supp. 212 at 213"

In a leading case, MAGRUDER v. DURY, 1914, 225 US 106, 119, 35 S.Ct. 77, 82, 59 L.Ed. 151, arising in the jurisdiction the rule is well stated that "a trustee (executrix) can make no profit of his trust."

The rule in such cases springs from his duty to protect the interests of the estate, and not to permit hispersonal interest to in any wise conflict with his duty in that respect.

The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity."

THIRD REASON: Tim Curry is the Criminal District Attorney of Tarrant County, Texas; therefore, the question is, does he have the right under law to represent Judge Burnett, the Probate Judge in Court No. 1, Tarrant County, Texas, who is charged with extrinsic fraud in this action; does Tim Curry have a conflict of interest ?

FOURTH REASON: Does Judge Burnett and "Richards" have the authority to sell some purported 39 acres of land out of the "heir's" grandfather's & grandmother's 225.1 acre AUBREY, TEXAS FARM, where there has been no "legal partition" between the estate and the purported living co-tenant, Florence Iona, John R. Lively's client?

On MAY 18, 1983, the Fort Worth,Tx. Appellate Court rendered their OPINION in No.2-82-212-CV(#81-8158-B below) in "Flo's" partition action filed, DEC. 3, 1981. They REVERSED and REMANDED all three Judge Narsutis OCT. 4-4-14-82 Judgments against "Flo" with all costs, $884.00. (APPENDIX "L") Hence, to date, there has been no "legal partition" between Ernest's estate and the living co-tenant, "Flo".

In the instant case, the Probate Court has no power to partition that farm."Probate Court is without jurisdiction to partition land jointly owned by decedent and living co-tenant, inasmuch as cotenant's interest was never part of decedent's estate." PEMBERTON v. LEATHERWOOD (CA) 219 SW2d 490, reh.den.err ref.

That is exactly the situtation in the instant case between "FLO" and the estate.

(RS art.6083, 6082, 6101(NOW: V.T.C.A., Property Code,Sect. 23.001)PARTITION JOHNSON v. COLT (CA) 48 SW2d 397.

The SUPREME COURT of TEXAS said: . . . . "The power to try title to land is confided by article V., section 8, of our constitution, Vernon's Ann. St., in the district court in the following words: "The District Court shall have * * * * jurisdiction * * * * of all suits for trial of title to land* * * * ," The power to try title to land is comprehended by the provision of section 16 of the same article of the constitution which provides that the county court shall not have jurisdiction of suits for the recovery of land". FARLEY v. DORSEY,(TEX.COMM'N.SECT. "A" 1940) 135 SW2d 89 at p.90.

Hence, the Probate Court has no jurisdiction to partition land in Denton County, Tex purportedly held undivided interests between the estate and a living cotenant, "FLO". Therefore, Probate Court Judge Burnett and "Richards" have no authority to sell that alleged 39 acres.

"A judgment is rendered <u>void</u>, not only by lack of jurisdiction over parties or subject-matter, but by the court's lack of authority to award particular relief which the judgment undertakes to grant, and judgment so entered is subject to a collateral attack". SMITH v. PASCHAL (TEX. COMM'N.SECT."A" 1928) 1 SW2d 1086; ELLIOTT v. PEIRSOL, 1828, 1 Pet 328, 7 L.Ed. 164 at 170, "But if it act without authority, its judgments and orders are nullities, they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal. . ."

FIFTH REASON: Deals with the insufficient descriptions (See APPENDIX "M", App.22,23,24 & 25) of the land contained in the orders and judgments. (A); (B); (C), etc. mentioned on p. iv, herein; raising the important question as whether they are consequentially, null & void?

First, all of those description were prepared for the various judges by Florence Iona Catlett's attorney, John R. Lively; which decriptions the "heir" , all along has maintained are insufficient; even giving testimony to that effect in the 236th D. C., Tarrant County, Tx. on August 27, 1981, Cause No.236-39718-76.

Second, Judge Burnett, Probate Court No.1, knew going in that there was a problem with those descriptions from "Lively's" letter of 12-16-80 to attorney Broiles for Plaintiff(R. 31) and Broiles' letter of 12-17-80 to Judge Burnett enclosing Plaintiff's "MOTION to APPROVE SETTLEMENT, FILED: 12-22-80(R.33 & 34)

Lively, in his letter of 12-16-80(R.31) to Broiles for the estate stated: "I have talked with Mr. Trickey(another attorney) regarding the discrepancy in the acreage, and

it appears to me that we are unable to explain it in terms of legal conveyances., p.2,par.2, (R.31). A judgment which contains a defective property description is void and the Sheriff's deed executed in carrying out such judgment is likewise void. GREER v. GREER, 191 SW2d 848 (TEX.1946); In MAUPIN v. CHANEY (SUP.CT.TEX. 1942) 139 TEX. 426, 163 SW2d 380 at p.431 the TEXAS SUPREME COURT said: "in other words, if there appears in the instrument enough to enable oneby pursuing an inquirey based upon the information contained in the deed to itentify the particular property to the exclusion of others, the description will be held sufficient.

In the instant case, that cannot be done because part of that FIFTH TRACT description WAS SOLD to J. G. Powledge in 4-14-1884 by James L. Catlett & wife. deed records, Denton County, Tx.,vol.29,page 9 @ 28 acres. A correct list of all the land which James L. Catlett & wife bought and sold during their lifetimes will be later in this petition which proves that the descriptions which "Lively" put into all of those instruments are null and void. (APPENDIX "M",App.22,23,24,&25.; p.7 in Writ of Error.)

The quantity figures in "LIVELY'S" descriptions, APPENDIX "M", totals 253.10 acres; yet about 28 acres were SOLD as stated leaving

a balance of 225.1 acres which coresponds to the Real Estate Tax records in Denton County, Tx. The issue of mutual mistake is not involved here. Therefore, the deeds must stand or fall by the descriptions contained in the deed from Smith and wife to Busby."SMITH v. SORELLE (TEX.SUP.CT. 1935) 87 SW2d 703 at 705.

Further, "In the case of NORRIS v. HUNT, 51 TEX. 609, in discussing thesufficiency of the description of land contained in an instrument in order to be valid, the court said:
"It is said by Chief Justice Marshall, in CHINOWETH v. HASKELL, 3 Pet (92), 96(7 L.Ed. 614), that 'It is an obvious principle that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself."

The FIFTH TRACT measurements by metes & bounds are 1179 varas X 339 4/10 varas (APPENDIX "M",App.24 &25) totaling 70.779 acres. Yet, the quantity figure is only 50 acres in Livelys descriptions - clearly error in Lively's descriptions. THOMPSON v. BRACKEN(Tex.Civ.App.Dallas 1936) 93 SW2d 614 at 616, ref.n.r.e.; DALTON v. RUST, 22 TEX. (133)134; HATCH v. De la Garza's Ex'r. 22 TEX. 176

The construction of property descriptions in deeds is a question of law. Haines v. McLean 154 TEX., 272 SW2d 777 reh.den.; COX v. HUNT, 145 US 376, 36 L.Ed. 741, 12 S.Ct. 962.

Further, the TEXAS SUPREME COURT in SMALL V. MORRIS (1953) 255 SW2d 174 at 174, " . . . were insufficient to locate the property on the ground and were not cured by reference in petition to deed."

JAMES L. CATLETT & WIFE'S DEEDS & PATENT

Following is a list of five (5) deeds & a patent of the land owned & sold by the Heir's grandmother & grandfather obtained from Tim Hodges, County Clerk, Denton County, Texas - (Sealed & Certified)

	QUANTITY in ACRES
FIRST TRACT: 8-3-1893,DEED RECORDS, Denton Co.,Tx.,Book 67,p.172 - J.T. Robinson & wife to J. L. Catlett	@ 80.00
SECOND TRACT: 11-11-1881,Original Patent RECORDS, Denton Co.,Tx., vol. "B",page 44,Patent#294, J.L.Catlett	14.60
THIRD TRACT: 11-27-1884,DEED RECORDS Denton Co.,Tx.,Vol.31,pages 566,567- T.B.Cagle & wife to J.L.Catlett	54.50
FOURTH TRACT: 11-12-1880,DEED RECORDS Denton Co.,Tx.,vol. "P",pages 550 & 551-J.G.Loudder &wife to JAMES Catlett	54.00
FIFTH TRACT: 10-19-1883,DEED RECORDS, Denton Co.,Tx.,vol."Y",page 50 - A.E. Looper & wife to James Catlett	50.00
TOTAL acres in quantity	@ 253.10
PART of FIFTH TRACT: 4-14-1884, DEED RECORDS, Denton Co.,Tx.,vol.29,page 9 - James L.Catlett & wife SOLD to J.G.Powledge	@ 28.00
NET acres owned by James L.Catlett & wife at their deaths	225.10

Further, using "Lively's metes & bounds measurements (1179 varas X 339 4/10 varas, which are controlling) of 70.779 acres for the FIFTH TRACT the total for the five tracts is 273.879 acres Not 225.1 acres which James L. Catlett owned at his death on DEC. 12, 1928.

SIXTH REASON:

EVIDENCE SHOWS THAT:
ERNEST LUTHER CATLETT INHERITED
100% OF THE AUBREY, TEXAS FARM

The "Heir" has stated, all along that he believed that his father (Ernest) inherited 100% of his grandfather's and grandmother's Aubrey, Texas farm under the laws of descent & distribution - Ernest was the last survivor - or through a construction of the second provision of Charlie Catlett's will (R.27).

1. (a) - Charlie (C.E.) Catlett, Testator, died 8-26-74
   (b) - Pharon C. (S.C., Sam) Catlett, died 9-19-75
   (c) - Ernest Luther Catlett, died 6-1-77

2. The first sentence (10 lines) of that SECOND PROVISION of Charlie's will reads:

"SECOND: I give and bequeath to my brother ERNEST LUTHER CATLETT, for and during his natural life all of my property, real, personal & mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's Lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and at his death all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas."

3. Ernest was the sole surviving son; Pharon

having predeceased Ernest.

In 1977, the TEXAS SUPREME COURT in FROST NAT. BANK of SAN ANTONIO v. NEWTON, 554 SW2d 149 at 153 stated: " . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument." REPUBLIC NAT BANK of DALLAS v. FREDERICKS, (TEX.SUP.CT. 1955) 283 SW2d 39, 155 TEX. 79.

4. First, Charlie's will (R.27) in that sentence (10 lines long) of the SECOND provision made survival of the remainderman, Pharon C., a condition precedent to the vesting of the remainder. Pharon must survive the first-taker Ernest. A fact which he did not do, he died on 9-19-75 whereas, Ernest died on 6-1-77.

5. The conditional element is incorporated into the description of, or into the gift to the remainderman, therefore, Pharon's remainder was contingent. Contingent upon Pharon surviving Ernest.

6. The Supreme Court of Texas in GUILLIAMS v. KOONSMAN, 1955, 275 SW2d 579, see p. 582 where they said: "The rule for determining whether a remainder is vested or contingent is thus stated by Gray in his work on The Rule Against Perpetutities "If the conditional element is incorporated into the description of, or into the gift to the remainderman.

then the remainder is contingent; but if, after words giving a vesting interest, a clause is added divesting it, the remainder is vested." 3rd Ed.,sect. 108(3),p.85,see also In Re: Roe's, 281 N.Y. 541, 24 NE2d 322, 131 A.L.R. 712, et sec. The rule as thus stated has been approved and adopted by the courts of this state. JONES v. HEXT, (T.C.A.) 67 SW2d 441, writ refused; RUST v. RUST, (T.C.A.) 211 SW2d 262, opinion approved, 147 TEX. 181, 214 SW2d 462.

7. In Charlie's will (R.27) it is clear that the gift to the remainderman, Pharon, in that first sentence has the conditional elemant incorporated into that description of, or into the gift itself to the remainderman, Pharon. Hence, the remainder is contingent. It is all in just one, long 10 line sentence.

As further stated in GUILLIAMS v. KOONSMAN, supra, at page 582 the TEX.SUP.CT., said: ". . . when the will (R.27) makes survival a condition precedent to the vesting of the remainder, it must be held contingent. In 36 Tex.Jur., Remainders and Reversions, section 7, p. 877. . . . "

8. The conclusion that the remainder to Pharon is contingent is impelled by those words ; " . . ., and at his death (Ernest's) all of said lands and other property shall vest in my brother, Pharon . . "(Emphasis added) Charlie's will (R.27) in that first sentence

ten lines long) of the SECOND provision made the survival of the remainderman (Pharon) a condition precedent to the vesting of the remainder. Fact is, Pharon predeceased Ernest. Pharon was not alive at the time of Ernest's death, the time when all of said lands and other property "shall vest" in Pharon.

9. There is no "but if" in that first sentence. Also, there is no clause added divesting it after words giving a vesting interest. as stated by Gray in his work. However, a conditional element is incorporated into the description of, or into the gift to the remainderman, then the remainder is contingent: . . . ." (Emphasis added).

10. Second, consider the second sentence of the SECOND provision of Charlie's will (R.27) which second sentence (six lines long) reads as follows:

"It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property, of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee simple by my

brother, PHARON CRAWFORD CATLETT."

11. It is the "Heir's" position that the language of that second sentence of that SECOND provision quoted is crucial to a determination of the intent of the testator, CHARLIE CATLETT.

12. The "Heir" concedes that the law favors a construction that a remainder is vested rather than contingent. Nevertheless, rules of construction are subordinate to the intent of the testator as gathered from the will as a whole, and "if there be any words in the will that indicate, though slightly, that it was not the intention of the testator to vest the estate, they will be given that effect," COKER v. ECKERT, 369 SW2d 473 (TEX.CIV.APP.Ft.Worth 1963) writ ref.n.r.e. (Emphasis added). The rule favoring early vesting of estates does not apply where there are other indicia of intent expressed. WILKES v. WILKES, 488 SW2d 398 at 401 (TEX. 1972).

13. The language of intent in the will of CHARLIE CATLETT, (R.27) is that Pharon would

inherit at the time of Ernest's death that "which shall remain upon his death . . ." This language presupposes that the property devised to Ernest would undergo diminution during the pendency of his estate and implies in Ernest a power to encroach upon, dispose of and consume the property of the estate. MURPHY v. SLATON,(TEX. 1954) 154 TEX. 35, 273 SW2d 588 at p.595-596. Resultingly, Pharon is relegated to the status of a contingent remainder-man whose rights are limited to any property undisposed of at the time of Ernest's death.

DICKERSON v. KELLER, 521 SW2d 288(Tex.Civ.App.) writ,ref.n.r.e., at p. 292,(2) & (3,5).

14. If time is annexed to the substance of a gift as a condition precedent, then the gift is contingent, and it is the uncertainty of a right to future enjoyment that distinguishes a vested from a contingent remainder. JONES v. HEXT, 67 SW2d 441 (T.C.A. Amarillo 1934,writ ref.). In relation to the will of Charlie (R.27), the uncertainty as to future enjoyment lay in the uncertainty as to what would remain in the estate at the termination of Ernest's interest. The express provisions that Pharon's estate would

vest at the time of Ernest's death, and that Pharon would inherit "that which shall remain" at the time of Ernest's death, express a clear intent that Pharon receive a contingent remainder, contingent upon Pharon's surviving Ernest and upon what property, if any, remained inthe estate at the time of Ernest's death. Consequently, Pharon's interest was contingent.

15. All of which, confirms the "heir's" position, that his father (Ernest) inherited 100% of the "heir's" grandfather's & grandmother's AUBREY, TEXAS FARM. Hence, the "heir's" position is true and not without merit nor frivolous.

Charlie Catlett was never married and he never had any children. Ernest was the sole survivor; hence, even under the law of descent & distribution, Ernest would inherit everything, 100%.

C O N C L U S I O N

For the reasons set forth above & following, a writ of certiorari should issue to review the judgment & opinion of the Court of

Appeals of Texas at Ft. Worth, Tx. in this matter.

a) - To explicitly rule on an issue of manifest importance, whether the State of Texas' Probate Court System has a right to sell some 39 acres purported to belong to the estate of Ernest Luther Catlett, Deceased without any "notice" or "hearing" to the real owner, "the heir", M. Wiley Catlett, a citizen of the State of Illinois; thereby, divesting "the heir" of the title which vested in "the HEIR" at the intestate's death (6-1-77), thus depriving "the heir" of his property (that land) without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution.

b) - To review the judgment and opinion of the Second Court of Appeals District of Texas (the state court of last resort)which conflicts with the decisions of The Supreme Court of another state and with this Supreme Court of the United States on the same federal question. Yes, even with the decision of the

former C. J. Massey of that same district in READ v. GEE, supra.

c) - To review the judgment & opinion of that Second Court of Appeals District of Texas whose decision has so far departed from the accepted and usual course of Judicial proceedings, as to call for an exercise of this Court's power of supervision.

DATED: NOVEMBER 24, 1992

Respectfully submitted,

M. Wiley Catlett

M. Wiley Catlett, Pro Se
1195 Sunnyside Ave.
Highland Park, Ill. 60035
(708) 831-3893
Petitioner

Supreme Court, U.S.
FILED
NOV 30 1992
OFFICE OF THE CLERK

92-944

NO. _____

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir",
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SECOND COURT OF APPEALS
DISCTICT OF TEXAS THROUGH
THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, "the Heir"
1495 Sunnyside Avenue
Highland Park, Ill. 60035
(708) 831-3893 Pro Se

40pp

INDEX TO APPENDICES

"A" The Supreme Court of Texas overruled Petition for rehearing(Sept. 9, 1992)

"B" The Supreme Court of Texas denied writ of error with "Writ Denied" notation (June 24, 1992) No notice given to Johnny W. Richards

"B.1" Order of the Second Court of Appeals of Texas overruled "Heir's" Mot. for rehearing (April 22, 1992)

"C" Order of the Second Court of Appeals of Texas GRANTED the Heir's Ext. of Time to Apr. 13, 1992(issued Mar. 26, 1992)

"D" Order of the Second Court of Appeals of Texas DENIED the "Heir's" leave for (issued March 16, 1992)

"E" Opinion and Judgment of the Second Court of Appeals of Texas dismissing the Heir's appeal(FEB. 25, 1992)

"F" Order of the Court of Appeals GRANTED IN PART the Heir's Mot. for Ext. of Time to file brief of response to FEB. 28, 1992 (issued February 18, 1992)

"G" Order of the Court of Appeals overruled the Heir's exceptions to part of Order of Dec. 9, 1991(issued DEC. 31, 1992

"H" Order of the Court of Appeals GRANTED the Heir's Mot. for Ext. Time to file tran to JAN. 6, 1992(issued DEC. 9, 1992 and DENIED request to take judicial notice

"I" Peggy Ramsey, Official Court Reporter Affirmation that no hearings were held on important item in Probate Court No. 1.

"J" Judge Burnett's ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REP. SIGNED August (with February lined out without initials of the judge) 1991

"K" Successor Adm. Richards "APP. to CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE (Sworn FEB. 13, 1991)

"L" J U D G M E N T Court of Appeals Second Supreme Judicial District of Texas, Fort Worth No.2-82-212-CV, (81-8158-B below) Denton County, Texas Reversed and Remanded with costs against Florence Iona Catlett (May 18, 1983)

"M" DESCRIPTIONS OF THE AUBREY, TEXAS FARM in "FLO'S" PETITION PREPARED BY Attorney John R. Lively for "Flo" and placed in several orders and judgments

"N" Judge Burnett's FEB 8, 1985 ORDER AUTHORIZING PAYMENT OF $41,684.00 to "Florence Iona Catlett's attorney, John R. Lively from Ernest's estate.

"O" Judge Burnett's Mar. 11, 1985 ORDER AUTHORIZING PAYMENT OF $5,172.48 to attorney Steven J. Williams

"P" Judge Burnett's FEB. 20, 1985 ORDER AUTHORIZING PAYMENT of $2,400 in attorney's fees and $74.00 in costs

"Q" Florence Iona Catlett's attorney, John R. Lively's JANUARY 25, 1985 "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00 against Ernest's Estate He failed to inclued offset of $1,233.33

"R" On May 18, 1988, the Successor Administrator ("Richards") Rejected the alleged claim of the lawfirm of Winn, Beaudry & Virden of Dallas, Tx. against Ernest's Estate

"S" February 13, 1986, MOTION AND ORDER FOR PAYMENT OF CLAIM of surveyors SCHOELL FIELDS & ASSOC. purported $3,178.17 against Ernest's Estate. Judge Burnett ordered same paid

"T" Judge Burnett's ORDER of July 18, 1984 granting "Richards" the authority to sell some purported 39 acres a part of the Heir's grandfather's & grand mother's 225.1 acre Aubrey, Texas Farm.

"U" October 23, 1984, "FREZZE AGREEMENT" with the Allied Northeast Bank, Nat'l. Ass'n, Acc't. No.301-4206 (NOW) checking, "Richards'" deposited $77,560.00

"V" Judge John Narsutis' ORDER FOR PAYMENT INCURRED AS A RESULT OF PRIOR COURT ORDER, signed & filed on FEB. 13, 1986 Surveyors SCHOELL, FIELDS & ASSOC., a/k/a Dewey Fields; purported $2,043.75, survey & $1,134.42 interest at 18% per year, total (also) $3,178.17 (SEE APPENDIX "S" herein) In Flo's Partition action in Denton Co., Tx.,No.81-8158-B. The prior Court order was REVERSED & REMANDED on MAY 18, 1983 OPINION Second Court of Appeals at Fort Worth, Tx.,No.2-82-212-CV)

APPENDEX "A"

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Austin, Texas 78711

Re:
Case No. D-2437

Sept. 9, 1992

Style:
M. WILEY CATLETT, HEIR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, Petitioner,
vs.
JOHNNY W. RICHARDS, II, INDIVIDUALLY, AND AS SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, ET AL
Respondents

Mr. M. Wiley Catlett
1495 Sunnyside Ave.
Highland Park, Il 60035

Mr. Tim Curry
Criminal District Attorney
401 W. Belknap Street
Ft. Worth, Tx. 76196-

Mr. Van Thompson, Jr.
Ass't. Dist. Attorney
401 W. Belknap St.
Ft. Worth, Tx 76196-0201

Ms. Sandra K. Houston
Law Office of John R.
1155 Burnett Plaza
801 Cherry Street
Ft. Worth, Tx. 76102

Mr. John R. Lively
Law Office of John R. Lively
1155 First RepublicBank Tower
801 Cherry Street
Fort Worth, Tx. 76102

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfull yours,
JOHN T. ADAMS, CLERK
BY: Tencha Damian, Deputy

cc: Honorable Robert M. Burnett

THE SUPREME COURT OF TEXAS
P.O. BOX 12248
Austin, Texas 78711

Re:
Case No. D-2437 June 24, 1992
Style:
M. WILEY CATLETT, HEIR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED v. JOHNNY W. RICHARDS II, INDIVIDUALLY, AND AS SUCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, ET AL.

Mr. M. Wiley Catlett
1495 Sunnyside Ave.
Highland Park, IL 60035

Mr. Tim Curry
Criminal District Attorney
401 W. Belknap Street
Ft. Worth, Tx.76196-

Mr. Van Thompson, Jr.
Ass't. Dist.Attorney
401 W. Belknap Street
Ft. Worth, Tx. 76196-0201

Ms. Sandra K. Houston
Law Office of John R.
1155 Burnett Plaza
801 Cherry Street
Ft. Worth, Tx. 76102

Mr. John R. Lively
Law Office of John R. Lively
1155 First RepublicBank Tower
Fort Worth, Tx. 76102

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ Denied."

Sincerely,
JOHN T. ADAMS, Clerk
By Courtland Crocker,
Deputy

cc: Honorable Robert M. Burnett

(Note: Please notice that no letter was sent to: Mr. Johnny W. Richards, II
7305 Grapevine Hwy.
N. Richland Hill, Tx. 76180.)

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II, et al

O R D E R

On this day came on to be considered the motion of Appellant, M. Wiley Catlett for rehearing and the response of appellee, Florence Iona Catlett.

It is the opinion of this Court that the motion for rehearing should be and is hereby overruled. It is the order of this Court that the opinion and judgment of February 25, 1992 stand unchanged.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

It is so ordered

SIGNED THIS 22nd day of April, 1992.

/s/ Sam J. Day
SAM J. DAY
JUSTICE

OVRULE.CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISCTICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II, et al

O R D E R

On this day came on to be considered the motion of appellant, M. Wiley Catlett, Heir, for extension of time to file motion for rehearing.

The motion is GRANTED. The appellant's motion for rehearing is ordered due April 13, 1992.

The Clerk of this Court is directed to transmit a copy of this order to the attorneys of record.

SIGNED this 26th day of March, 1992

/s/ Sam Day
Sam Day
JUSTICE

XREH.CVje

APPENDEX "D" App. 4

COURT OF APPEALS

SECOND COURT OF APPEALS DISCTICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir, Of The Estate of Ernest Luther CATLETT, DECEASED

vs. No. 2-91-213-CV

Johnny W. Richards, II, Individually, And As Successor Dependent Administrator Of The Estate of Ernest Luther Catlett, Robert M. Burnett, Judge, Probate Court Number One, Tarrant County, Texas

O R D E R

On this day the Court has considered the motion of appellant, M. Wiley Catlett, for leave to have the "heir's" two motions mailed on Feb. 26th & 27th, 1992 considered as a motion for rehearing and appellees responses.

The motion is DENIED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

SIGNED this 16th day of March, 1992.

/s/ Sam Day
Sam Day
JUSTICE

ORDER.CVrf

NO. 2-92-213-CV

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. WILEY CATLETT, HEIR APPELLANT

VS.

JOHNNY W. RICHARDS, II,
INDIVIDUALLY AND AS ADMINISTRATOR,
AND FLORENCE IONA CATLETT APPELLEES

FROM THE PROBATE COURT NO. ONE OF TARRANT COUNTY

OPINION AND JUDGMENT ON DISMISSAL OF APPEAL

On this day came on to be considered by the Court the motion of appellee, Florence I. Catlett, to dismiss appeal. It is this Court's opinion that this motion should be granted.

It is therefore ordered, adjudged and decreed that this appeal be dismissed.

It is further ordered that appellant, M. Wiley Catlett, pay all costs of this appeal,

and that said costs be paid from the cash deposit in lieu of bond made with the clerk of the trial court, for which let execution issue, and that this decision be certified below for observance.

/s/ SAM DAY
SAM DAY
JUSTICE

PANEL D
FARRIS, MEYERS AND DAY, JJ
DO NOT PUBLISH
TEX. R. APP. P. 90(c)
FEB 25 1992
DISMIS.213mj

(Note: This ORDER & JUDGMENT of Justice Sam Day was signed without any date of signing, as such, TEX.R.CIV.PROC.,R.306a & R. 329b, subd.5, ExParte Godeke (TEX.SUP.CT.1962) 355 SW2d 701 and in which Justice Sam Day gave no reasons therein, other than he relied on the misleading, late (FEB. 7, 1992) filed motion of respondent, Florence Iona Catlett, "MOTION TO STRIKE & FOR DAMAGES" of FEB. 7, 92. A motion to Strike the whole pleadings is in effect a general demurrer. City of Brownville v Galvan, 139 TEX. 128, 162 SW2d 98(1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE: BANKER v. JEFFERSON COUNTY NO. ONE, 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90, TEX.R.CIV.PROC.)

Hence, the ORDER & JUDGMENT is null & void because the same is also based on Florence I. Catlett's (late FEB. 7, 1992) "MOTION TO STRIKE & FOR DAMAGES which has been eliminated from Texas practice; hence, without authority.

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir, of the Estate of Ernest Luther Catlett, Deceased

vs. No. 2-91-213-CV

Johnny W. Richards, II, Individually and as Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased, and Florence Iona Catlett

ORDER

On this day came on to be considered the motion of appellant, M. Wiley Catlett, for extension of time to file brief or response and continuance of hearing.

The motion is GRANTED IN PART, Appellant's responses to appellee's motion to strike appellant's brief and for damages; and to appellee's motion to dismiss appeal are ordered due February 28, 1992.

The hearing on said motions remains scheduled at 9 A.M. March 4, 1992.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

SIGNED THIS 18th day of February, 1992

/s/ David F. Farris

David F. Farris
Justice

XBRAPE,CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II Administrator and individually

O R D E R

On this day the Court considered the exceptions of Appellant, M. Wiley Catlett, Heir to part of Order of December 9, 1991.

The motion is OVERRULED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record

SIGNED this 31st day of December, 1991

/s/ H. Tod Weaver
H. Tod Weaver
CHIEF JUSTICE

ORDER,CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir of The Estate of Ernest Luther Catlett, Deceased

vs. No. 2-91-213-CV

Johnny W. Richards, II, Administrator and individually

O R D E R

On this day came on to be considered the motion of appellant, M. Wiley Catlett, heir, to extend time to file transcript and statement of facts.

The motion to extend time to file the transcript is GRANTED . The transcript is ordered due January 6, 1992.

To the extent that said motion requests permission to file, as a part of the statement of facts in this case, a statement of facts in cause no. 81-8158-B in the 158th District Court of Denton County, or requests this court to take judicial notice of the statement of facts in that case, the motion is DENIED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record and clerk of trial court.

SIGNED THIS 9th day of December, 1991.

/s/ H. Tod Weaver

H. Tod Weaver
CHIEF JUSTICE

XTRANS.CVmj

No. 2-91-213-CV

IN THE COURT OF CIVIAL APPEALS
FOR THE SECOND SUPREME JUDICIAL DISTRICT
OF TEXAS AT FORT WORTH

M. WILEY CATLETT, Heir, OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED — APPELLANT

VS.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, AND AS SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS — APPELLEES

AFFIRMATION TO REQUEST FOR STATEMENT OF FACTS

I, PEGGY RAMSEY, Official Court Reporter of Probate Court Number One of Tarrant County, Texas, do solemnly swear and affirm that I have diligently searched my records and have found nothing to indicate that I reported hearings in Cause Number 77-2726-1, styled The Estate of Ernest Luther Catlett, deceased, involving the following matters:

1. Motion and Order for Payment of Claim for $3,178.17 filed on February 13, 1986,

regarding payment to Schoell, Field & Associates, Inc.

2. Order Approving Annual Account filed on or about October 18, 1985, or authorization of payment of claims totalling $66,373.09.

3. Motion for authority to Sell Real Property filed June 18, 1984, by Johnny W. Richards, II, or matters concerning a sale on October 19, 1984.

4. Increase of administrator's bond on or about October 25, 1984, or any other date.

Signed this the 21st day of November, 1991.

/s/ Peggy Ramsey
PEGGY RAMSEY

Sworn to and subscribed before me by Peggy Ramsey this the 21st day of November, 1991, to certify which witness my hand and seal of office.

/s/ Faye J. McNeely
Notary Public
State of Texas

FAYE J. McNEELY
Notary Public State of Texas
My Commission Expires 4-7-94

No. 77-27262

ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE

On this day the Court heard and considered the Application To Close Estate and Discharge Personal Representative, filed herein by the Successor Administrator of this Estate, and after hearing the evidence in support of such Application, the Court finds that this Estate has been fully administered; that the Account For Final Settlement has previously benn approved; that the Administrator has delivered all of the property of the Estate remaining on hand to the persons entitled to receive the same; and that this Estate should be closed.

IT IS, THEREFORE, ORDERED that Johnny W. Richards, II, Administrator of this Estate, is hereby discharged from his trust; that Western Surety Company, Surety on the Bond of the

Successor Administrator, is hereby discharged from further liability under such bond; and this Estate is hereby declared to be closed.

SIGNED this 6th day of ~~February~~ August, 1991.

/s/ Robert M. Burnett

JUDGE PRESIDING

ORDER SOLO PAGE

(Note: February was lined out and the month of August written in, with no initials of Judge Robert M. Burnett whose alleged signature is a rubber stamp.)

(Further Note: On AUG. 24, 1991, the "heir" received two copies each of:
(A) - "Application to Close Estate & to Discharge Personal Representative" (R.274,Item #3) which was FILE MARKED: FEB. 19, 1991, but not mailed to the "heir" by "Richards" until August 15, 1991, and APPENDEX "H"
(B) - Judge Burnett's "Order Closing Estate and Discharging Representative,"APPENDEX "G" signed on August 6, 1991, but not mailed to the "heir" by "Richards" until August 15, 1991. (R.276,Item#1)
(On Sept. 4, 1991, FILED, The "heir's" "Motion to "Set-Aside" Judge Burnett's August 6, 1991 ORDER CLOSING ESTATE and DISCHARGING PERSONAL REPRESENTATIVE" (R.277,Item#2) - Overruled by operation of law - 30 days later.)

No. 77-27262

ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE

JOHNNY W. RICHARDS, II, Successor Administrator of the Estate of Ernest Luther Catlett, Deceased, as Applicant, furnishes the following information to the Court:

I.

This Court has previously, on February 12, 1991, entered an Order approving the Account for Final Settlement of this Estate and ordering the Applicant to deliver the property remaining on hand to the persons entitled to receive such property.

II.

Applicant has fully complied with such Order by paying a reasonable commission and fee of $1,000.00 to Johnny W. Richards, II, by paying the sum of $7,561.14 to Winn, Beaudry & Virden, former attorneys for M.

Wiley Catlett and by paying the balance of the Estate, $30.30 to M. Wiley Catlett. There is no property belonging to the Texas Estate remaining in the hands of Applicant.

Applicant requests this Court enter an Order discharging Applicant from his trust, discharging Western Surety Company, the Surety on Applicant's Bond from further liability, and declaring the Estate closed.

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE PAGE ONE

/s/ J. W. Richards, II
J. W. RICHARDS, II
Suite 101-102
N. Richland Hills, Texas 76180
(817) 498-4471
TBID: 16848300

SUCCESSOR ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, a Notary Public in and for said county, this date appeared JOHNNY W. RICHARDS, II, to me known to be the Administrator of the Estate of Ernest Luther Catlett, Deceased, who stated on his oath that the

above Application to Close Estate and to Discharge Personal Representative is in all things true and correct.

/s/ J. W. Richards, II

JOHNNY W. RICHARDS, II, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME ON the 13th day of February, 1991

/s/ Patsy A. Gentry
Notary Public in and for
the State of Texas

Seal PATSY A. GENTRY
Notary Public, State of Texas
My Commission Expires
Sept. 19, 1991

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE

PAGE TWO

(Note: Johnny W. Richards, II's sworn statement is false in that the "heir", M. Wiley Catlett never received any thing from his father's estate, let alone, the $30.30 mention herein. Judge Robert M. Burnett is charge with extrinsic fraud in that he carried out his threat on August 19, 1982, by saying: " I'll see that you don't get anything from your father's estate" which was outside of his immunity.)

COURT OF APPEALS
Second Supreme Judicial District

Forth Worth, Texas, May 18, 1983

William L. Smith, Jr. 202-216 Texas Building
Denton, TX 267-2881

Dear Sir:

The Judgment of the Trial Court in case of M. WILEY CATLETT, Admin. of Estate of Ernest Luther Catlett, Deceased vs. Florence IONA CATLETT No. 2-82-212-CV from Denton County, was reversed and remanded today. Copies of theopinion and judgment of this Court are hereto attached.

Yours truly,
Yvonne Palmer, Clerk

J U D G M E N T

M. Wiley Catlett, Admin. of Estate of Ernest Luther Catlett, Deceased
2-82-212-CV vs.
Florence Iona Catlett

From the 158th Dist. Court,
Denton County
(81-8158-B)
May 18, 1983
Opinion by Justice Burdock (NFP)

This cause came on to be heard on the transcript of the record and the same having been reviewed, it is the opinion of the Court that there was error in the judgment. It is

therefore ordered, adjudged and decreed that the judgment of the trial court is reversed and the cause remanded.

It is further ordered that appellee, Florence Iona Catlett, pay all costs of this appeal, for which let execution issue, and that this decision be certified below for observance.

NO. 2-82-212-CV

IN THE COURT OF APPEALS FOR THE

SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

M. WILEY CATLETT, Admin. of
Estate of Ernest Luther Catlett,
Deceased — APPELLANT

vs.

FLORENCE IONA CATLETT — APPELLEE

FROM THE 158th DISTRICT COURT OF DENTON COUNTY

OPINION

Appeal is taken from an order imposing sanctions and granting a default judgment in favor of appellee, Florence Iona Catlett.

We reverse and remand.

Originally, appellee, Florence IonaCatlett, R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles sued appellant, M. Wiley

Catlett, a resident of Highland Park, Ill. and Administrator for the estate of Ernest Luther Catlett for partition of real property located in Denton County, Texas. R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles have since been severed from the main cause of action in the trial court and are not involved in this appeal. . . . . .

After reviewing the record and the time frame in which the above occurred, appellant was essentially precluded from complying with the court order. In the interest of justice, the trial court should have given appellant a reasonable amount of time after notice, in which to comply with the order. Plodzik v. Owens-Corning Fiberglass Corp. 549 S.W.2d 52 (Tex.Civ. App.--Austin 1977) no writ) We find that the trial court was arbitrary and unreasonable in striking appellant's answer and granting a default judgment for failure to comply with the discovery orders and that appellant should have been given a reasonable amount of time in order to make arrangements to appear in the scheduled deposition.

Due to our disposition of this case, appellant's other points of error need not be addressed.

The judgment of the trial court is reversed and the cause is remanded.

/s/ William E. Burdock
William E. Burdock
JUSTICE

PANEL B
FENDER, C.J.: BURDOCK AND SPURLOCK II, JJ.
DO NOT PUBLISH
TEX. R. CIV. R. 452
MAY 18, 1983

DESCRIPTIONS OF THE AUBREY, TEXAS FARM
IN FLORENCE IONA CATLETT'S PETITION
FILED BY ATTORNEY, JOHN R. LIVELY
ON FEB. 8, 1983 IN PROBATE COURT
TARRANT COUNTY, TX.No.77-2726-1

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile west of the town of Aubrey, Texas containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the Dennis Cowan Survey:

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey; THENCE East 713-1/2 varas, stake for corner; THENCE South 633 varas corner; THENCE West 713-1/2 varas corner, the West Boundary Line of said Cowan Survey; THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records,Denton County, Texas.

SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett:

BEGINNING at the Northwest corner of the above said tract, said corner being survey station

543 plus 47;
THENCE South along the West boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway; THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50; THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50; THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East boundary line of said tract; THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25; THENCE 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00; THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the point of beginning and containing 2.07 acres, more or less, 1.24 acres being within the limits of the present right-of-way as shown by right-of-way map on file with the State Highway Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

SECOND TRACT: Being a tract of land of which J. L. Catlett was the original owner and patentee, said land being conveyed to said J. L. Catlett by Patent No. 294, vol. 1, dated Nov. 18, 1881, recorded in Records of Denton County, Texas, on February 23, 1882, to which record reference is made herein for a full description of said land.

THIRD TRACT: Being a part of the George Lane Survey in Denton County, Texas, described as follows:

BEGINNING at the SE corner of the 320 acre survey in the name of P. H. Viser; THENCE East 433 varas to a point oak blazed on four sides; THENCE North 712 1/2 varas a stake for corner on the EB line of the said George Lane Survey; THENCE West 433 varas a stake in the WB line of the said George Lane Survey; THENCE South 712 1/2 varas to the place of beginning, containing 54 1/2 acres of land more or less, being the same land conveyed to J. L. Catlett by Thos. B. Cagle and wife, Deed recorded in Volume 31, Page 566, Denton County Deed Records, to which reference is here made.

FOURTH TRACT: Being 54 acres of land in Denton County, Texas, a part of the Stephen Cantwell 160 acre survey, described as follows:

BEGINNING at the SW corner of the said Cantwell Survey; THENCE East 540 varas to the SE corner of the said Cantwell Survey; THENCE North 566 varas to John C. Wilson's south line; THENCE West 540 varas; THENCE South 566 varas to the place of beginning, being the same land conveyed to J. L. Catlett by J. G. Loudder and wife, S. A. Loudder, on November 12, 1880, Deed of record in Record Book P, Pages 550 and 551, of Denton County Deed Records to which reference is here made.

FIFTH TRACT: Being a part of the John Jordan Survey in Denton County, Texas, and described as follows, to-wit:

Tract of 50 acres in the north end of the John Jordam Survey and bounded as follows, to-wit:

BEGINNING at the SW corner of said Jordan Survey; THENCE East 1179 varas to the NE corner of the same to a stake from which a Post Oak marked X bears S 20 degrees E 5 varas and another marked H, bears 7 varas; THENCE South 339 4/10 varas to a stake; THENCE West 1179 varas to a stake on the West line of the Jordan Survey; THENCE North 339 4/10 varas to the place of beginning, found in Deed Records, Book Y, Page 50, Deed Records, Denton County, Texas.

NUMBER 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

ORDER AUTHORIZING PAYMENT OF CLAIM

On this day came on for hearing the authenticated Claim of John R. Lively and after due notice appeared John R. Lively, and Johnny W. Richards, II, the Successor Administrator, and the Court finding that the claim is in proper form, and the Court after hearing the evidence and considering the exhibits finds that the claim of John R. Lively is proper, that the Administrator has not disallowed same, and that the Estate of E. L. Catlett, deceased is indebted to John R. Lively mB in the sum of Forty-~~two~~ one Thousand-~~Two~~-Six Hundred mB Eighty-Four ~~Twenty Eight~~ and NO/100 Dollars ($41,684.00 (~~$42,228.00~~);

ORDERED that the Claim of John R. Lively mB in the sum of Forty-~~Two~~ one Thousand and ~~Two~~ Six mB Hundred Eighty-Four ~~Twenty Eight~~ and NO/100 Dollars mB ($41,684.00 (~~$42,228.00~~) against the Estate of E. L.

Catlett, Deceased, is ALLOWED by this Court.

It is further ORDERED that Johnny W. Richards, II, the Successor Administrator, pay to John R. Lively from the funds of the Estate the sum of Forty-~~Two~~ Thousand ~~Two~~ One Hundred ~~Twenty-Eight~~ Eighty-Six and NO/100 Dollars ($41,684.00) ~~($42,228.00)~~.

SIGNED this the 8th day of February, 1985.

/s/ Robert M. Burnett
JUDGE PRESIDING

2 / 20 / 85
11.00

No. 77-2726-1

ESTATE OF
ERNEST LUTHER
CATLETT, DEC'D.

IN THE PROBATE COURT
NUMBER ONE OF
TARRANT COUNTY, TEXAS

O R D E R

On the 20th day of February, 1985, came on to be considered STEVEN J. WILLIAMS' Application for Payment of Attorneys Fees. Steven J. Williams appeared in person and announced ready. Johnny W. Richards, II, Successor Administrator of the above-numbered and entitled Estate, appeared in person and announced ready.

After reviewing the pleadings and hearing the evidence and arguments of counsel, the court is of the opinion that such Application is well-taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Steven J. Williams be paid attorneys fees in the amount of $5,172.48. Such fees were reasonably and necessarily incurred in connection with this Estate and represent a reasonable attorneys fee.

SIGNED March 11, 1985.

/s/Robert M. Burnett
JUDGE PRESIDING

No. 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

O R D E R

On this date the Application of Successor Administrator for Payment of Fees and Costs was heard. After considering the pleadings and statements of fees submitted by Successor Administrator, the Court finds that such Application is well-taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Successor Administrator be paid the sum of $2,400 as attorneys fees and $74.00 as costs incurred through the date of the signing of this order.

SIGNED February 20, 1985.

/s/ Robert M. Burnett
JUDGE PRESIDING

NO. 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

"AUTHENTICATED CLAIM OF JOHN R. LIVELY"

1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of $42,228.00. This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate. Attached hereto as Exhibit "A" is an itemized statement of dates, services rendered and amount of time incurred. Claimant further states that a reasonable attorney's fee for the services described in Exhibit "A" in Tarrant County, Texas, at the time that they were rendered was $85.00 per hour.

2. Claimant requests allowance and payment of this claim of $42,228.00.

/s/ John R. Lively
JOHN R. LIVELY, Claimant
1130 Fort Worth Club Tower
Fort Worth, Texas 76102

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY and after being duly sworn by me, stated that the foregoing claim is just and that all legal offsets, payments and credits known to claimant have been allowed.

/s/ John R. Lively
JOHN R. LIVELY, Claimant

SUBSCRIBED AND SWORN TO BEFORE ME by JOHN R. LIVELY on this the 25th day of January, 1985, to certify which witness my hand and seal of office

/s/ Gay Lemar
Notary Public in and for the
State of Texas
My commission expires 8-1-88

PLAINTIFF'S EXHIBIT "I" in the Complaint
(Note: See "Richards" Dec. 21, 1987 INVENTORY and APPRAISEMENT, page TWO, "There is one (1) claim due and owing the Estate in the amount of $1,233.33 held by John R. Lively, attorney at law, as a condemnation award."
/s/ Johnny W. Richards, II
Sworn to by "Richards" on Dec. 17, 1987
(R.197,Item#17.Vol.1680 pages 0791-0795)
On January 14, 1987, Judge Robert M. Burnett signed and entered same by his ORDER.

(NOTE: Copied page 1 only of Lively's Claim.

NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE TARRANT COUNTY, TEXAS

SUCCESSOR DEPENDENT ADMINISTRATOR'S REJECTION OF CLAIM

I, JOHNNY W. RICHARDS, II, the Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased, finding upon an examination of the claim of the lawfirm of Winn, Beaudry & Virden of Dallas, Texas presented to me as a claim against said Estate, but being unable to determine the full amount of the claim from the supporting documentation attached, do hereby reject the claim in its entirety.

DATED: May 18, 1988

/s/ Johnny W. Richards, II
JOHNNY W. RICHARDS, II
Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased

CAUSE NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

MOTION AND ORDER FOR PAYMENT OF CLAIM

COMES NOW SCHOELL, FIELDS & ASSOCIATES, INC., Claimant herein, and moves this Court for payment of its claim in the amount of Three Thousand One Hundred Seventy-eight and 17/100 Dollars ($3,178.17) for services performed on behalf of the estate as ordered by the 158th Judicial District Court of Denton County, Tex. in Cause No. 81-8158-B styled "Florence Iona Catlett v. M. Wiley Catlett, et al.". Claimant would show that it was ordered to perform surveying services by the above referenced Court and that attached hereto as Exhibit "A" and incorporated herein by reference for all purposes is a detailed accounting of the services rendered which were reasonable and customary and a copy of the Order for Payment signed by the Judge of the 158th District Court is attached hereto as Exhibit "B" and incorp-

orated herein by reference for all purposes.

Claimant therefore requests that this Court order Johnny Richards, the Dependent Administrator of the Estate, to pay to Claimant the amount of $3,178.17 within ten (10) days of the date of signing of the Order For Payment.

Respectfully submitted,
SCHOELL, FIELDS & ASSOCIATES, INC.

By /s/ Claudia Fields,
CLAUDIA FIELDS,
AUTHORIZED AGENT

MOTION AND ORDER FOR PAYMENT - Page 1
EXHIBIT "A" (Note: None attached)
FILED: FEB. 13, 1986 (R.183,Item#20 EXHIBITS missing. "Richards'" was ordered to pay $3,178.17 within ten day of FEB. 13, 1986 and he did.

ORDER FOR PAYMENT

On this day came on to be heard Claimant's Motion for Payment of Claim and, after hearing the evidence and reviewing the Motion and the attachments thereto, the Court is of the opinion that the above is a valid claim and that the Motion should be granted and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Johnny Richards, dependent administrator for the Estate of Ernest Luther Catlett, Dec'd.

shall pay out of the funds of the estate the sum of $3,178.17 to SCHOELL, FIELDS & ASSOCIATES, INC. within ten (10) days of the signing of this order.

SIGNED on FEBRUARY 13, 1986.

/s/ Robert M. Burnett

JUDGE PRESIDING

MOTION AND ORDER FOR PAYMENT - Page 2

(NOTE: That survey firm, SCHOELL, FIELDS & ACCOCIATES, INC was contracted by attorney John R. Lively the attorney of Florence Iona Catlett a Respondent. See Attorney's purported Claim of 1-25-85: "12-1-82 Telephone conference with J. G. Green re: survey, contract with commissioner - Telephone conference with client re: status of report and survey - . . . " (R.139, Item#28; ST/F - FEB. 8, 1985 JOHN R. LIVELY. See Peggy Ramsey's, Official Court Reporter for Probate Court No. 1, Tarrant Co., Tx. PR/AFFIRM #1, Heir's #2certifying that no hearing were held in the Probate Court No. 1 on Schoell, Field & Assoc.'s $3,178.17 Claim ordered paid by the "heir's" father's Estate.)

SEE APPENDIX "V", No.81-8158-b,Denton Co.,Tx.

NO. 77-2726-1

IN RE: THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

O R D E R

On this the 18th day of July, 1984 came on to be heard the Motion for Authority to Sell Real Property previously filed herein. After consideration of the Motion, and the evidence and arguments of counsel, this court finds that such Motion is well-taken and should be granted.

IT IS DECREED that Johnny W. Richards, II, Successor Administrator of this Estate, shall have authority to sell the real property described in the Inventory and Appraisement previously filed herein. Such authority shall include any and all acts necessary to dispose of such property in a manner that will best benefit this Estate, including those acts set forth in the Motion previously filed by Johnny W. Richards, II.

It is further ordered that the proceeds MB of the sale shall be placed under a safekeeping Agreement.

SIGNED July 18, 1984.

/s/ Robert M. Burnett
JUDGE PRESIDING

(R.123, Item#37 & Item#38; June 18, 1984 FILED, "RICHARDS" "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" with Exhibit "A" contracts

(NOTE: Said motion was served ONLY on attorney Douglas R. Hudman who on January 12, 1984 "FILED" Brown, Herman, Scott, Dean & Miles, "Hudman's clients" "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY" vol.1438, pages 735 - 745; vol. 1407, pages 580; R.109,Item#47)

On OCT. 25, 1984, "FILED" "FREEZE AGREEMENT" with Allied Northeast Bank, Account No.301-4206 depositing $77,560.66 by "RICHARDS",

Approved on 10-25-84 by Judge Burnett.(R.134, Item#34; 39 acres of land purportedly belonging to Ernest's Estate, without any "NOTICE" or "HEARING" to the "heir" . Sold to some clients of "Richards" the AUBREY GROUP made up of Sharon L. Tolbert, David J. McGilvray and Joseph R. Kilianski for about $80,000.00. Well below th market price at that time. See Exhibit "A" of JOHN R. LIVELY'S JAN. 25, 1985 CLAIM for $42,228.00 in attorney's fees: Item, April 6, 1981 Telephone conferences from client re: prospective purchaser and verbal offers of $3,000.00 made by Pat Wilson.)

NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT DECEASED

IN THE PROBATE COURT NUMBER ONE TARRANT COUNTY, TEXAS

"F I L E D" 10-25-84

FREEZE AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Allied Northeast Bank, Nat'l. Ass'n., 7001 Grapevine Hwy., Fort Worth, Texas by and through an officer of such institution, whose signature is duly affixed below, and does hereby certify that Johnny W. Richards, II, Administrator of the above captioned estate, shall deposit with such institution in checking(NOW) JWR II savings account No. 301-4206, funds belonging to said estate with such account balance as of the 29th day of October, 1984, being in the sum of $77,560.66.

Further, Allied Northeast Bank, Nat'l. Ass'n. 7001 Grapevine Hwy, Fort Worth, Texas, hereby certifies that it will not deliver to the said Administrator or any other person any of said funds so deposited, including any subsequent deposits to the account or any dividends

credited to the account, except upon the written authority of the Probate Court of Tarrant County, Texas, in accordance with Section 194 (5) of the Texas Probate Code, as ammended.

Witness the signature and seal of the said Allied Northeast Bank, National Association 7001 Grapevine Hwy., Fort Worth, Texas,, this 23rd day of October, 1984.

Allied Northeast Bank, Nat'l.Ass'n.

by: Evelyn Hewell, A. C.

APPROVED this 25th day of October, 1984.

/s/ Robert M. Burnett
JUDGE PRESIDING

VOL. 1459 PAGE 291

APPENDIX "V"

App. 40
FILED:
FEB. 13, 86

CAUSE NO.81-8158-b

FLORENCE IONA CATLETT IN THE DISTRICT COURT

VS. DENTON COUNTY, TX.

M. WILEY CATLETT, ET AL 158th JUDICIAL DISTRICT

ORDER FOR PAYMENT INCURRED AS A RESULT OF PRIOR COURT ORDER

On the 27th day of September, 1982, an order was signed by this Court ordering Schoell, Fields and Associates, a.k.a. Dewey Fields, to perform any services necessary to assist the Commissioners of this lawsuit in making a partition of all properties involved.

Schoell, Fields and Associates began this work on September 27, 1982, and concluded the work on January 14, 1983. The charges incurred totaled Two Thousand forty three dollars and 75/100 ($2043.75).

In addition, interest charges have accured at a rate of 1½% per month simple interest (18%) per year. These charges total One Thousand One Hundred thirty four dollars and 42/100 ($1134.42).

On this 13 day of February, 1986, we request this Court to render a Judgment in favor of Dewey Fields of Schoell, Fields and Associates in the amount of $3,178.17 for service performed as ordered by this Court.

/s/ Claudia Fields

Claudia Fields, Agent for Dewey Fields, Schoell, Fields and Associates

/s/ John Narsutis

Judge John Narsutis

VOL. 214 PAGE 983

F I L E D:
1986 FEB. 13 PM 12:1
GLADYS WHITTEN
by M. Carlton

(ATTENTION: Please note that APPENDIX "S" , App.33, 34, & 35 is the same claim by this Claimant, SCHOELL, FIELDS & ASSOCIATES, INC. of Denton, Tx. for $3,178.17 in two different Courts: Probate Court No.1, Cause No.77-2726-1 Tarrant County, Tx. and in the 158th District Court, Denton County, Tx., Cause No.81-8158-b. There is no showing that the Denton Co., Tx. was paid, also. However, it was "Flo's" attorney, John R. Lively, who contracted for that survey. See the circumstantial evidence in "Lively's" JAN. 25, 1985 purported Claim in No.77-2726-1 for $42,228.00 against Ernest's estate: "12-1-82 Telephone conference with J. C. Green re: survey, contract with commissioner - Telephone conference with client re: status of report and survey . . . "

(3)

Supreme Court, U.S.
FILED
JAN 4 1993
OFFICE OF THE CLERK

No. 92-944

In The

Supreme Court of the United States

October Term, 1992

M. WILEY CATLETT,

Petitioner,

vs.

JOHNNY W. RICHARDS, II, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VAN THOMPSON, JR.
ASSISTANT DISTRICT ATTORNEY
State Bar No. 19960000
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233

Counsel of Record

Attorney for Respondent
Hon. Robert M. Burnett

Due Date: January 4, 1993

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

13 pp

QUESTIONS PRESENTED

1. Whether Petitioner has presented and preserved a substantial federal question in the state courts prior to submission of the instant Petition for Writ of Certiorari?

2. Whether there is any personal jurisdiction of Respondent, Hon. Robert M. Burnett?

LIST OF PARTIES

PETITIONER:

M. Wiley Catlett

RESPONDENTS:

Johnny W. Richards, II, Florence Iona Catlett, and the Hon. Robert M. Burnett, Judge of Probate Court No. 1 of Tarrant County, Texas

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

JURISDICTION 2

STATEMENT OF THE CASE 3

REASONS FOR DENYING THE WRIT 4

A. THERE IS NO PERSONAL JURISDICTION OF RESPONDENT BURNETT 4

B. FAILURE TO PRESERVE A SUBSTANTIAL FEDERAL QUESTION 5

C. NO CONFLICT WITH EXISTING AUTHORITY 7

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

Beck v. Washington, 369 U.S. 541 (1962) 2, 6

Bowe v. Scott, 233 U.S. 658 (1914) 6

Bowen v. Hazel, 723 S.W.2d 795 (Tex. App.-Texarkana 1987, no writ) 5

Cardinale v. Louisiana, 394 U.S. 437 (1969) 3, 6

Catlett v. Catlett, 630 S.W.2d 478 (Tex. App.-Fort Worth 1982, writ ref'd n.r.e.) 3, 5

Estate of Wright, 676 S.W.2d 161 (Tex. App.-Corpus Christi 1984, writ ref'd n.r.e.) 5

Godchaux Co. v. Estopinal, 251 U.S. 179 (1919) 2, 6

Herndon v. Georgia, 295 U.S. 441 (1935) 6

Huston v. Federal Deposit Insurance Corporation, 800 S.W.2d 845 (Tex. 1990) 5

Illinois v. Gates, 462 U.S. 213 (1983) 3, 6

Jones v. Griege, 803 S.W.2d. 486 (Tex. App.-Dallas 1991, no writ) 5

Michigan v. Tyler, 436 U.S. 499 (1978) 2

Whitney v. California, 274 U.S. 357 (1927) 6

Wiley Catlett v. John R. Lively, 90-105 3

CODES

28 U.S.C. § 1257(a) 2, 6

TEX. LOC. GOV'T CODE, § 22.001(a) 4

TEX. LOC. GOV'T CODE, § 22.001(d) 4

TEX. LOC. GOV'T CODE, § 22.220 3

TABLE OF AUTHORITIES – Continued

Page

RULES

TEX. R. APP. PROC., Rule 131(e) 4

TEX. R. CIV. PROC., Rule 41(a) 5

CONSTITUTIONAL PROVISIONS

Texas Constitution, Art. 5, § 6 3

No. 92-944

In The

Supreme Court of the United States

October Term, 1992

M. WILEY CATLETT,

Petitioner,

vs.

JOHNNY W. RICHARDS, II, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondent Hon. Robert M. Burnett, Judge of Probate Court No. 1 of Tarrant County, Texas, respectfully requests that the Court deny the instant Petition for Writ of Certiorari, which seeks to review the decision of the Court of Appeals for the Second Court of Appeals District of Texas, dismissing the purported appeal of

Petitioner. This opinion is not reported, but a copy of this Order is reproduced as Appendix "E" of the Petition.

JURISDICTION

Respondent challenges the jurisdictional basis upon which Petitioner seeks Writ of Certiorari, 28 U.S.C. §1257(a), because no substantial federal question is presented. This statute requires that Petitioner show a substantial federal question is presented in conformity with state procedural rules which the state has a substantial interest in enforcing. *Michigan v. Tyler*, 436 U.S. 499, 512 n.7 (1978). This is essential to Supreme Court jurisdiction. *Godchaux Co. v. Estopinal*, 251 U.S. 179, 181 (1919); *Beck v. Washington*, 369 U.S. 541, 550-54 (1962). Petitioner has wholly failed to preserve any substantial federal question in the state courts in accordance with the applicable state procedural rules.

No personal jurisdiction existed as to Respondent Burnett because Judge Burnett was never personally a party to the legal proceedings attempted to be appealed by Petitioner to the Texas Court of Appeals.[1] The dismissal of Petitioner's appeal as to Judge Burnett by the Court of Appeals was proper on due process grounds because Judge Burnett was not a "party" against whom

[1] Judge Burnett was the trial judge in the probate matter Petitioner was attempting to appeal. When he took his appeal in state court from the trial court's order, Petitioner simply added Judge Burnett's name to the caption and proceeded as though he were a party and the cause was an action for damages.

the Court of Appeals could exercise any personal jurisdiction. This independent ground for decision obviates the necessity of Supreme Court review. *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969); *Illinois v. Gates*, 462 U.S. 213, 218-20 (1983).

Respondent does not challenge the timeliness of the Petition.

STATEMENT OF THE CASE

This is an attempted appeal by Petitioner, acting pro se, from an Order of Probate Court No. 1 of Tarrant County, Texas closing the Estate of Ernest Luther Catlett. Petitioner, a purported "heir" of the estate, attempted to appeal this Order to the state Court of Appeals. When he did so he added the names of Respondent Burnett as well as those of other interested parties, and sought monetary damages against all of them.[2] The balance of the purported appeal dealt with prior Orders of the Court which were final and unappealable. See, for example: *Catlett v. Catlett*, 630 S.W.2d 478 (Tex. App. -Fort Worth 1982, writ ref'd n.r.e.).[3]

---

[2] There is no such procedure for this sort of action in Texas under the Rules of Civil Procedure. The jurisdiction of the Court of Appeals applicable in this case is appellate only and the Court of Appeals lacked jurisdiction to grant Petitioner the relief sought. Art. 5, §6, Texas Constitution, §22.220, TEX. LOC. GOV'T CODE.

[3] Petitioner has also previously attempted to ventilate this seeming interminable dispute in this Court. See: 90-105, *Wiley Catlett v. John R. Lively*, et al., Petition for Writ of Certiorari denied October 1, 1990.

By Opinion and Judgment on Dismissal of Appeal, dated February 25, 1992, the Court of Appeals dismissed the appeal.

Petitioner's Application for Writ of Error was denied by the Supreme Court of Texas, by Order, dated June 24, 1992.[4] Petitioner's Motion for Rehearing was denied by Order, dated July 23, 1992.

REASONS FOR DENYING THE WRIT

A. THERE IS NO PERSONAL JURISDICTION OF RESPONDENT BURNETT

As noted above Judge Burnett was the trial judge who presided over the probate proceedings from which the Petitioner attempted the purported appeal. He was never personally a party to the litigation in question and there was no personal jurisdiction over him in either the Court of Appeals or the Supreme Court of Texas. In addition the Court of Appeals had no such original jurisdiction as to actions for damages.

---

[4] Petitioner had failed to preserve any points for appeal to the Supreme Court of Texas in his Motion for Rehearing in the Court of Appeals except to object to the lower court's failure to consider two post judgment motions filed therein as a Motion for Rehearing. Respondent Burnett challenged the Supreme Court's jurisdiction because of (1) the lack of any personal jurisdiction as to Judge Burnett, (2) the failure of Petitioner to preserve the alleged errors in his Motion for Rehearing as required by the Texas Rules of Appellate Procedure, Rule 131(e), and (3) for his failure to invoke the court's jurisdiction under §22.001(a) and (d), TEX. LOC. GOV'T CODE.

B. FAILURE TO PRESERVE A SUBSTANTIAL FEDERAL QUESTION

None of the Points of Error presented by Petitioner to the Court of Appeals related to any denial of federally protected rights. Rather the Points of Error presented related to alleged errors in the conduct of the proceedings in the probate matter pending before Judge Burnett. For example, Petitioner contended that various orders entered in 1981 and 1982 of the probate court were void because of the lack of a proper legal description. These included orders in other cases and entered by other courts which are valid subsisting orders and have in some instances been affirmed on appeal. *See: Catlett v. Catlett, supra.* Other Points of Error assert abuse of discretion and reversible error as to actions taken in 1984-1986. These were final and appealable orders and are now barred by res judicata under Texas probate law because they finally disposed of a controverted question for which that particular part of the probate proceeding was brought even though not finally disposing of the entire probate proceeding. *Huston v. Federal Deposit Insurance Corporation,* 800 S.W.2d 845, 848 (Tex. 1990); *Jones v. Griege,* 803 S.W.2d 486, 487 (Tex. App.-Dallas 1991, no writ) (partial summary judgment is a final appealable order); *Bowen v. Hazel,* 723 S.W.2d 795, 797 (Tex. App.-Texarkana 1987, no writ) (order requiring executor to return certain sums of money to the estate is a final appealable order); *Estate of Wright,* 676 S.W.2d 161, 164 (Tex. App.-Corpus Christi 1984, writ ref'd n.r.e.) (summary judgment determining decedent's heirs is a final appealable judgment). Probate appeals not timely taken are lost. Rule 41(a), TEX. R. CIV. PROC.

Had Petitioner desired to raise the issue of bias or prejudice of the trial court he could have raised this issue not only on appeal but also by a motion for recusal of the trial court during the course of the probate proceedings themselves. Petitioner has not done so. Rather now because he disagrees with the results in state court, Petitioner characterizes the proceeding as a denial of due process.

While there is apparently no precise method for raising and preserving a federal question in state court, mere references to "due process of law" or the "constitution and treaties" are insufficient. *Herndon v. Georgia*, 295 U.S. 441, 442-43 (1935); *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914).

In order to invoke this Court's jurisdiction under 28 U.S.C. §1257(a), it is essential that such be raised, presented and preserved in a timely and proper manner at the appropriate points in the state court proceedings. *Godchaux Co. v. Estopinal*, 251 U.S. 179, 181 (1919); *Beck v. Washington*, 369 U.S. 541, 550-54 (1962). The Supreme Court has no jurisdiction to exercise its jurisdiction over state court judgments, unless a substantial federal question has been raised or decided in the state court below. *Whitney v. California*, 274 U.S. 357, 360 (1927); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969); *Illinois v. Gates*, 462 U.S. 213, 218 n.1 (1983).

C. NO CONFLICT WITH EXISTING AUTHORITY

Petitioner has had his day in court and his state law claims are barred by res judicata and lack of personal jurisdiction of Respondent, Hon. Robert M. Burnett. Petitioner has shown no conflict with existing Supreme Court authorities or between the Circuit Courts as to any substantial federal question.

CONCLUSION

For the reasons heretofore stated and discussed it is respectfully submitted that no matter within the jurisdiction of this Court is presented and that Petitioner has failed to present and preserve any substantial federal question in the state courts. Neither has any such substantial federal question been decided in the state courts nor personal jurisdiction of Respondent, Hon. Robert M. Burnett been shown. Further, no significant constitutional issue of national import is presented by this Petition for Writ of Certiorari, and it should be denied.

Respectfully submitted,

TIM CURRY
Criminal District
Attorney
Tarrant County, Texas

VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233

Counsel of Record

Supreme Court, U.S.
FILED
JAN 19 1993
OFFICE OF THE CLERK

No. 92-944

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

vs.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SECOND COURT OF APPEALS
DISTRICT OF TEXAS THROUGH
THE SUPREME COURT OF TEXAS

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, "the Heir"
1495 Sunnyside Avenue
Highland Park, Ill. 60035
(708) 831-3893 Pro Se

TABLE OF CONTENTS

PETITIONER'S "REPLY" TO JUDGE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS

JUDGE'S "COVER" SHOWS, the wrong court 1

"Motion to Strike" Eliminated in Texas 2

JUDGE'S BRIEF IS "UNTIMELY" 3

"Heir's" JURISDICTION IS CORRECT 4

JUDGE'S "STATEMENT OF THE CASE" 5

CONTRARY TO JUDGE, A SUBSTANTIAL FEDERAL QUESTION WAS PRESERVED by the "Heir" 9

- "The touchstone of due process is protection of the individual against arbitrary action of government" 10
- Supreme Court of OKLAHOMA said: 11
- "Heir" showed a denial of his federally protected "RIGHTS" 11
- Contrary to JUDGE, NULL & VOID orders & judgments are not res adjudicta as to anything 13

CONFLICT OF INTEREST 14

- Probate Clerk used to serve Judge (Also see pages 8 & 9 herein) 14
- There are "Conflicts" with rulings of U. S. SUPREME COURT Cases (Also see pages 9 thru 11 herein) 14

CONCLUSION 15

TABLE OF AUTHORITIES

CASES:	PAGE
August Kern Barber Supply Co. v. Freeze (TEX.SUP.CT.1903) 96 TEX. 513, 74 SW2d 303 at 304	12, 13
Baldwin v. Hale, 68 US 223, 233, 17 L.Ed. 531	11
Banker v. Jefferson County No. One (TEX.CIV.APP. 1950) 277 SW2d 130	2
Cipollone, Ind., & as Executor of the estate of Cipollone v. Liggett Group, Inc., et al (1991) 500 US ____, 120 L.Ed.2d 407 at 418, 112 S.Ct. ___	4
City of Brownville v. Galvan, 139 TEX. 128, 162 SW2d 98 (1942)	2
Dennis v. Sparks (1980) 449 US 24, 66 L.Ed. 185, 101 S.Ct. 183	5
Elliott v Petrsol, (1828) 1 Pet 328, 7 L.Ed. 164 at 170	3
Ex Parte Godeke, (TEX.SUP.CT. 1962) 355 SW2d 701	2
Edrington v. Allshbrooke, 21 TEX. 186	12
Fuentes v. Shevin, (1972) 407 US 67, 32 L.Ed.2d 556, 92 S.Ct. 1983,reh. den. 409 US 902, 34 L.Ed.2d 165, 93 S.Ct. 177 at 569	11
Fulton v. Finch, (TEX.SUP.CT.1961) 162 TEX.351, 346 SW2d 823 at 827	13
Howlett v. Rose, (1990) 496 US 356, 110 L.Ed.2d 332 at 335, 110 S.Ct. 2430 at 347	4

London v. Chandler, (TEX. 1966) 406 SW2d 203, writ.r.n.r.e. 8

Mullane v. Central Hanover Tr. Co., 339 US 306 at 313, 94 L.Ed. 865 at 872, 70 S.Ct. 652 10

Paul v. Willis, (TEX. 1887) 69 TEX. 261, 7 S.W. 357 at 359 13

Railway Company v. Ware, 74 TEX. 47, 11 S.W. 918 12

Read v. Gee, (Tex.Civ.App.Ft.Worth 1977) 551 SW2d 496 at 498 10, 16

Seal v. Barnes, (OKLA.SUP.CT. 1934) 168 OKLA 550, 35 P2d 704 at pp. 713 & 714 10, 11

Snell v. Knowles, 87 SW2d 871 (TEX.CIV.APP. 1935) 8

White v. Hidalgo County Water Improvement Dist. No. 2, (TEX.CIV.APP. 1928) 6 SW2d 790 at 791 13

Wolff v. McDonnell (1974) 418 US 539, 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952 10

Wood v. Georgia (1981) 450 US 261, 67 L.Ed.2d 220, 101 S.Ct. 1097 5

York v. State of Texas, 137 US 15 at 16, 34 L.Ed. 604 at 605, 11 S.Ct. 9 9

UNITED States Constitution;

5th Amendment 10, 15

14th Amendment 10, 11, 15

FEDERAL STATUTES:

United States Code:

Title 28, Section 1257(a) 4

SUPREME COURT of the UNITED STATES,

RULES: R. 15.2 4

R. 24.1 (a) 13

TEXAS CONSTITUTION:

Art. I., Section, 19 10

TEXAS RULES of CIVIL PROCEDURE:

Rule, 90 2

Rule, 103 8, 14

Rule, 106 14

Rule, 121 9

Rule, 306a 2

Rule, 329b, subd. 5 2

TEXAS STATUTES:

V.A.T.S., Probate Code,Sect. 353 7

V.A.T.S., Probate Code,Sect. 354 7

V.A.T.S., Rules of Appellate Procedure:
Rule, 131 6

V.A.T.S., Government Code,
Section 22,001, subs. (a)(6) 6

Section 22,001, subs. (d) 6

No. 92-944

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir", PETITIONER,

vs.

JOHNNY W. RICHARDS, II, ET AL, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS THROUGH THE SUPREME COURT OF TEXAS

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Contrary to Respondent, Hon. Robert M. Burnett (see cover) this is not a matter "On Petition For Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit."Petitioner, M. Wiley Catlett, the Heir, respectfully prays that a writ of certiorari issue to review the Opinion and

Judgment (APPENDIX "E") unpublished without any date of signing as such by Justice Sam Day, TEX.R.CIV.PROC.,R.306a & 329b,subd. 5, Ex Parte Godeke (TEX.SUP.CT. 1962) 355 SW2d 701. "STAMPED" at the bottom: FEB. 25, 1992, in the Second Court of Appeals District of Texas dismissing Petitioner's appeal relying "only" on Florence Iona Catlett's , "Flo", Motion to Strike and for Damages filed in this action on FEB. 7, 1992 (late). The transcript was filed by the Probate Court Clerk on JAN. 3, 1992, R.1)

Respondent, "Flo's" Motion to Strike the whole pleadings is in effect a general demurrer. City of Brownville v. Galvan, 139 TEX. 128, 162 SW2d 98 (1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE; BANKER v. JEFFERSON COUNTY NO. ONE 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90 TEX.R.CIV.PROC.

Therefore, "Flo's" motion to strike and for damages is null and void, as is Justice

Day's FEB. 25, 1992 Opinion; since he based his opinion on Flo's null & void motion.

> "But if it act without authority, its judgments and orders are nullities, they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal . . . " ELLIOTT v. PERIRSOL. 1828, 1 Pet 328, 7 L.Ed. 164 at 170."

Further, "the Heir's", Petition for Writ of Certiorari to The Second Court of Appeals District of Texas at Fort Worth, Texas was filed with the Supreme Court of the United States by placing 40 copies of same and the Appendix in the Deerfield, Illinois U. S. Post Office via FIRST CLASS MAIL with postage prepaid on NOVEMBER 24, 1992. The same was docketed by Loretta S. Ruffin, Assistant Clerk on NOV. 30, 1992 as No.92-944. Three copies of the Petition and the Appendix were mailed to each of the Respondents or their attorneys of record via the Two Day Priority Mail of the U. S. Postal Service on NOV. 24, 1992.

Therefore, Judge Burnett's Brief in Opposition was due on DEC. 24, 1992 or at the latest, DEC. 30, 1992. Not on JAN. 4, 1993 as shown on his cover page. Resultingly, Respondent has failed to comply with the RULES of the SUPREME COURT of the UNITED STATES, R. 15.2 (JAN. 1, 1990)

- - - - - - - - - -

JURISDICTION

While Judge Burnett does not challenge the timeliness of the "Heirs" Petition, he does challenge the fact that "This Court's" jurisdiction is invoked under Title 28 U.S.C. Sect. 1257(a); HOWLETT v. ROSE, (1990) 496 US 356, 110 L.Ed.2d 332 at 335, 110 S.Ct. 2430, citing jurisdiction under 28 U.S.C. Sect. 1257(a) and on p. 347 of a 27 page Report the Court states: "The laws of the United States are laws of the several States and just as much binding on the citizens and Courts thereof as the State laws are." ; Cipollone, Ind., & as Executor of the estate of Cipollone v. Liggett Group, Inc., et al (1991) 500 US ___, 120 L.Ed.2d 407, at 418, 112 S.Ct. ___ Certiorari to the United States Court of Appeals for the Third Circuit, because of the manifest importance of the issue, we granted certiorari to resolve the conflict."

Hence, the "heir's" Petition for Writ of Certiorari to the Second Court of Appeals District of Texas (the state court of last resort) is correct, " . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . "

See the QUESTIONS PRESENTED on pages i thru iv in the "Heir's" petition.

- - - - - - - - -

STATEMENT OF THE CASE

Tim Curry, Criminal District Attorney of Tarrant County, Texas an employee of the State of Texas who represents Judge Burnett the Probate Court No. 1 judge, Tarrant County, Texas, also on the payroll of the State of Texas and who is charge with extrinsic fraud in this matter outside of his immunity; hence, Time Curry has a conflict of interest. DENNIS v. SPARKS (1980) 449 US 24, 66 L.Ed. 185, 101 S. Ct. 183. Action against private parties who allegedly conspired with state judge, held maintainable despite Judge's immunity (Unanimous Court) ; WOOD v. GEORGIA (1981) 450 US 261, 67 L.Ed.2d 220, 101 S.Ct. 1097 where the record suggested conflict of interest.

Further, Tim Curry, Criminal District Attorney of Tarrant County, Texas contradicts himself on pages 3, lines 6 & 7 and 4, lines 6 & 7 also: "Petitioner's Motion for Rehearing was denied by Order, dated July 23, 1992." Fact is that Tim Curry was correct on page 3, (APPENDIX "A", SEP. 9, 1992.) The record will show that Tim Curry for Judge Burnett has misapprehended many facts in this matter, for example:

a) - In his June, 9, 1992 brief he questioned the "Heir's" correctness in his jurisdictional statement to the Texas Supreme Court.

The "Heir" said: " "The Supreme Court of Texas has jurisdiction of this action under subsection (a)(6) of section 22,001 of the Government Code, or subsection (d)."

And the "Heir" said: "See the EXAMPLE in (d) - Statement of Jurisdiction, R.APP. PROC., Rule 131, p.519 thereof."

b) - Contrary to Tim Curry the "Heir" did file about seven (7) affidavits in this action - the "heir" listed each document & the date in his "Motion for Rehearing" of

July 7, 1992 which was sworn to.

c) - Further, contrary to Tim Curry the "Heir" did offer a great deal of circumstancial evidence which proved, for example, that Successor Adm., Richards" had failed to file a "REPORT OF SALE" (V.A.T.S.,ProbC., Sect. 353, see Docket Sheets (R.5) and that "Richards" bond of $8,000 was not increased on sale of land for about $77,560.66,V.A.T.S. ProbC.,Sect.354 (PR AFFIRM, her #3, my #6, & her #4, my #7 (R.134)

d) - Further, contrary to Tim Curry the "Heir" in his "Motion for Rehearing" , did include each and every POINT OF ERROR to the Supreme Court of Texas & did make reference to those facts in his brief to the Supreme Court of Texas.

e) - Further, contrary to Tim Curry in his footnote 1 on page 2 and in the STATEMENT OF THE CASE on p. 3 and in A. on page 4, Judge Burnett is a necessary party and was served by the Probate Clerk, one of three officers Texas law empowers to serve

process, the other two being the sheriff and constable. TEX.R.CIV.PROC.,R. 103; See generally LONDON v. CHANDLER, 406 SW2d 203 (TEX. 1966), writ.r.n.r.e.; SNELL v. KNOWLES, 87 SW2d 871 (Tex.Civ.App. 1935)

In Judge Burnett's case service was made through the Probate Court Clerk, Judy Duncan, file marking (OCT. 16, 1991) the "Heir's" list of documents, some 79, (R.288) No.2-91-213-CV(No.77-2726-1 below) In The Court of Appeals For The Second Supreme Judicial District of Texas at Fort Worth which showed Judge Burnet as one of the Appellees in that appeal of Judge Burnett's final "ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE" signed August 6, 1991 by lining out "February" without his initials.(R 276,Item#1), and placing those seven pages file marked (OCT. 16, 1991) in an envelope addressed to Judge Robert M. Burnett, Probate Court Number One, Tarrant County Courthouse,Fort Worth,Tx. 76196-0401 and mailing same to the Judge FIRST CLASS with postage prepaid & with return address.

f) - On FEB. 21, 1992, Tim Curry filed Judge Burnett's "Motion to Join in Motion (of "FLO'S") and to Adopt Brief's of "FLO'S".

Hence, the record will show that Tim Curry's appearance before Yvonne Palmer, Clerk for the Court of Appeals in Ft. Worth on FEB. 21, 1992 to file Judge Burnett's motion cured any alleged personal jurisdictional problem. YORK v. STATE of TEXAS, 137 US 15 at p.16, 34 L.Ed. 604 at p.605, 11 S.Ct. 9; TEX.R.CIV.P.,Rule 121 (Reply to Curry's REASON "A", page 4 of Opposition Brief)

- - - - - - - - - - -

B. FAILURE TO PRESERVE A SUBSTANTIAL FEDERAL QUESTION - pages 5 & 6

First, the record will show that the "Heir" did indeed preserve QUESTION " I ", "Did the State of Texas through its Probate System and Judge Burnett and Successor Admin. Richards have a right to sell some 39 acres from the "Heir's" grandfather's and grandmother's 225.1 acre farm near Aubrey, Texas purported to belong to the estate of Ernest without any "NOTICE" or "HEARING" to the real

owner, "the Heir", M. Wiley Catlett, a citizen of the State of Illinois; thereby, divesting "the Heir" of the title to that land which vested in "the Heir" at the intestate's death (his father, Ernest on 6-1-77), thus depriving "the Heir" of his property (that land) without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution and yes, even of the Constition of Texas, Art. I, Sect. 19. READ v. GEE (Tex.Civ.App.,Ft.Worth 1977) 551 SW2d 496 at 498 whereChief Justice Massey held: that judgment order would be reversed for want of due process of law in proceedings at which it was rendered." U.S C.A.Const. Amends, 5, 14; Vernon's Ann.St. Const., art. 1, Sect. 19, RNRE

The Supreme Court of the United States in WOLFF v. McDONNELL (1974) 418 US 539, 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952 held: "The touchstone of due process is protection of the individual against arbitrary action of government."; MULLANE v. CENTRAL HANOVER TR. CO. 339 US 306, at 313, 94 L.Ed. 865 at 872, 70 S.Ct. 652.

The Supreme Court of Oklahoma held in SEAL v. BARNES (OKLA.SUP.CT. 1934) 168 OKLA 550,35 P2d 704 at pp.713 & 714: "Since a sale of real estate by an administrator divests the heir of the title which vested in them at the intestate's death, an order for such sale can only be made after notice to

the heir's, otherwise, the property would be taken without due process of law and therefore . . . is absolutely void, and deprives them of due process of law in violation of the Fourteenth Amendment to the Federal Constitution."

Further, the record will show that Tim Curry either failed to read the "Heir's" "Brief for Appellant" filed in No. 2-91-213-CV on FEB. 3, 1992 or he is attempting to deliberately mislead THE SUPREME COURT of the UNITED STATES when he states: "None of the Points of Error presented by Petitioner to The Court of Appeals related to any denial of federally protected rights." See POINT OF ERROR NUMBER THREE, page vi & pages 24 & 25 thereof which cites: SEAL v. BARNES (OKLA. SUP.CT.1934) 168 OKLA 550, 35 P2d 704 at 713-714; FUENTES v. SHEVIN (1972) 407 US 67, 32 L.Ed.2d 556, 92 S.Ct. 1983, reh.den. 409 US 902, 34 L.Ed.2d 165, 93 S.Ct. 177, at p. 569 where THE U. S. SUPREME COURT stated: "(3,4) . . . Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." BALDWIN v. HALE, 68 US 223, 233, 17 L.Ed. 531, & other cites . . . It is equqlly fundamental that the right to notice and an opportunity to be heard " must be granted at a meaningful time and in a meaningful manner." (Brief for Appellant, FEB. 3, 1992, page 25 therein.)

Tim Curry representing Judge Burnett is partially correct on his page 5 where he states: " For example, Petitioner contended that various orders endtered in 1981 and 1982 of the probate court were void because of the lack of a proper legal description."

Petitioner's QUESTION V PRESENTED, pp. iii & iv in his petition specificially identifies those orders and judgments which he proves are null and void due to their insufficient legal descriptions of the land (APPENDIX "M") placed therein by "Flo's" attorney, John R. Lively for the various judges to sign.

However, Tim Curry is incorrect in saying that those null and void orders & judgments are now barred by res judicata, see

AUGUST KERN BARBER SUPPLY CO. v. FREEZE (TEX.SUP.CT. 1903) 96 TEX. 513, 74 S.W.2d 303 at 304, "1. decisions in Railway Company v. Ware, 74 TEX. 47, 11 S.W. 918 and Edrington v. Allshbrooke, 21 TEX. 186, are authority for the proposition that the enforcement of a judgment may be enjoined when, by the face of the record upon which it was rendered, it is shown to be void . . . The judgment being a mere nullity andopen to collateral attack, any attempt by process based upon it, to

reach the property of the person against whom it is rendered, is an unlawful invasion of the rights of property, against which, in the absence of other adequate remendy, he is entitled to injunction." ; PAUL v. WILLIS (TEX.1887) 69 TEX.261, 7 S.W. 357 at 359.

"If the points made against the judgment are such as go to the validity of the same, it cannot be argued with any show of success that they should have been presented on the original trial. It is futile to contend that a void judgment is res adjudicta as to anything. If a judgment is void, then it is an absolute nullity, and may be assiled at any time or place, either directly or collaterally . . . parties cannot by any acts, however, negligent, lose right to assil void judgment." WHITE v. HIDALGO COUNTY WATER IMPROVEMENT DIST. NO.2(TEX.CIV.APP.1928) 6 SW2d 790 at 791; FULTON v. FINCH (TEX.SUP.CT.1961) 162 TEX.351, 346 SW2d 823 at 827

Further, the U. S. SUPREME COURT, RULE, 24 states: "At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide."

C. NO CONFLICT WITH EXISTING AUTHORITY - page 7

Again, contrary to Judge Burnett's attorney, Tim Curry, the Chief Criminal District Attorney of Tarrant County, Texas the record shows a conflict of interest in his representing Judge Burnett in this action where Judge Burnett is also on the payroll of the County of Tarrant, State of Texas and who is charged with extrinsic fraud which occurred outside of the judges immunity.

Further, (see pages 8 & 9 herein) Judge Burnett was properly served through the Clerk of the Probate Court, one of the three officers Texas law empowers to serve process, the others being the sheriff and constable. TEX.R.CIV.PROC., R. 103 & 106.

And again, (see pages 9, 10 & 11 herein) contrary to Tim Curry, the "Heir" has shown & the record shows, in his Petition and at every stage of this action that there are conflicts with the rulings of the Supreme Courts of other states and also with existing U. S. SUPREME COURT authorities.

C O N C L U S I O N

For the reasons set forth above and those reasons set forth in the record a Petition for writ of certiorari should issue to review the judgment and opinion (APPENDIX "E") of the Second Court of Appeals District of Texas at fort worth, Texas.

a) - To explicitly rule on an issue of manifest importance, whether the State of Texas' Probate Court system has a right to sell some 39 acres purported to belong to Ernest' Estate without any "notice" or "hearing" to the real owner of that land, "the heir", M. Wiley Catlett, an Illinois citizen; thereby, divesting "the heir" of the title which vested in the "heir" at the intestate's death (Ernest's on 6-1-77), hence, depriving "the heir" of his property (that land) without "due process of law" in violation of the 5th & 14th Amendments of the Federal Constitution.

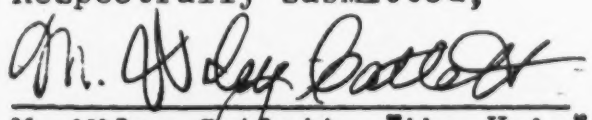
b) - To review the judgment and opin-

ion of the Second Court of Appeals District of Texas (the State Court of last resort) which conflicts with the decisions of the Supreme Court of another state and with The SUPREME COURT of the UNITED STATES on the same federal question. Yes, even with the decision of former Chief Justice Massey of that same district in READ v. GEE, (TEX.CIV. APP. Ft. Worth - 1977) 551 SW2d 496 at 498.

c) - To review the judgment & opinion of that Second Court of Appeals District of Texas whose decision has so far departed from the accepted andusual course of Judicial proceedings, as to call for an exercise of this Court's power of suppervision.

DATED: JANUARY 13 , 1993.

Respectfully submitted,



M. Wiley Catlett, "the Heir"
1495 Sunnyside Avenue
Highland Park, Ill. 60035
(708) 831-3893 - Pro Se
Petitioner's REPLY to
Brief in Opposition